12a 1957

LOUISIANA

TWO FEDERAL DISTRICT JUDGES RULED UNCONSTITUTIONAL TWO LOUISIANA LAWS DESIGNED TO BAR NEGROES FROM STATE COLLEGES

JUDGES RULE AGAINST TWO LOUISIANA LAWS

Designed To Keep Negroes From State Schools

NEW ORLEANS, April 16.—(AP)—Two Louisiana laws designed to bar Negroes from state colleges were ruled unconstitutional Tuesday by two Federal judges.

One 1956 law required all college applicants to submit certificates of eligibility and moral character. The other law made it illegal for a school official to advocate integration. This had the effect of preventing the officials from signing certificates for Negroes.

Federal Judges Herbert W. Christenberry and J. Skelly Wright said the laws were "a transparent device" to bypass the 14th Amendment.

Their joint opinion was handed down after argument on three cases were heard in Baton Rouge.

The cases were filed against McNeese State College, Southwestern Louisiana Institute and Southeastern Louisiana College by 12 Negro students. On Jan. 28, the judges granted temporary restraining orders allowing the students to stay in the schools.

Another suit, filed against the board of supervisors of Louisiana State University, was consolidated by the judges in their opinion.

All suits were filed by A. P. Tureaud of New Orleans, former chief counsel in Louisiana for the National Association for the Advancement of Colored People.

The opinion, written by Judge Wright, said in part:

"The litigation is another attempt by the Louisiana Legislature to preserve by law segregation in the educational institutions of the state.

"This attempt, while more subtle than its predecessor, nevertheless fails because the 14th Amendment of the Federal Constitution 'nullifis sophisticated as well as simpleminded modes of discrimination.'"

In Louisiana—

Two Segregation Laws Stricken

NEW ORLEANS, April 16 (AP)—Two federal district judges today ruled unconstitutional two Louisiana laws designed to bar Negroes from state colleges.

"We'll take further steps," said State Sen. William Rainach, whose committee drafted the laws last year.

Judges Herbert Christenberry and J. Skelly Wright, in their joint ruling, held that Acts 15 and 249 of the 1956 Legislature formed "a transparent device" to continue segregated schools.

Twelve Negro students at Southwestern Louisiana Institute, Southeastern Louisiana College and McNeese State College had filed suits. The judges consolidated them with another similar suit filed against the board of supervisors of Louisiana State University.

Act 15 requires all applicants for state colleges to present certificates of eligibility and moral character. Act 249 made it illegal for school officials to advocate integration, thus putting them under the penalty of dismissal if they signed the certificates for Negroes to enter white colleges.

Atty. Gen. Jack Gremillion said at Baton Rouge that he could not comment on the ruling until he had read it.

"But we certainly are going to ask for a rehearing or make an appeal," he added. "We consider this certainly different than the earlier suits."

Rainach, chairman of the joint legislative committee on segregation, said, "this is not going to be the last attempt by the Legislature of Louisiana to enforce its laws. We'll take further steps.

12a 1957

Sirica Is Named U. S. Judge Here

Post + Times Herald P. 1-L

Washington D. C.

Jues. 1-22-57

By Jack Eisen
Staff Reporter

John J. Sirica, a 52-year-old Washington trial lawyer, was nominated yesterday by President Eisenhower to be a Federal District Judge here.

The selection is subject to Senate confirmation. Sirica will succeed Judge Henry Schweinhaut, who retired three months ago because of poor health.

12a

Sirica's appointment had been expected for some time in legal circles here.

In a statement, the Connecticut-born attorney pledged himself to "do my utmost to perform my judicial duties with fairness to all persons." He said he was grateful to Mr. Eisenhower and Attorney General Herbert Brownell Jr. "for the confidence they have reposed in me."

The new Judge-designate has been a Washingtonian since the age of 14 and a worker in the Republican Party vineyard since the 1930s. Although—like most longtime Washingtonians—he never has voted, Sirica has accepted scores of speech-making assignments from the Republican National Committee Speakers' Bureau.

He is, in the main, a product of local schools. He attended classes for a time in Jacksonville, Fla., where his parents had moved from Waterbury, Conn., then attended the Emerson Institute and the old Columbia Preparatory School here.

To pay his way through Georgetown University Law School, he worked as an athletic instructor for the Knights of Columbus. He became an amateur boxing champion in college.

Protege of Rover

Sirica began his law career just 30 years ago Wednesday—on Feb. 27, 1927. After four years in private practice, he was chosen as an assistant by United States Attorney Leo A. Rover. He prosecuted several noteworthy cases, including three men who were convicted of slaying a cab driver.

Rover, now Chief Judge of the Municipal Court of Appeals, hailed the new appointment, saying, "He should make an excellent judge."

From 1934, when he left the prosecutor's office, until 1947, when he joined the firm of Hogan & Hartson as chief of its trial department, Sirica participated in several celebrated cases. In 1937, he won acquittal for his client in the first case brought under the Securities and Exchange Act.

Quit House Probe

In 1944, he served as general counsel to a House select committee which investigated the Federal Communications Commission. He quit, denouncing the probe as a "whitewash."

Five years ago today he married Lucille Camalier, a daughter of the late Charles A. Camalier Sr. They live in a two-year-old Cape Cod style home at 5069 Overlook rd. nw. They have a 4-year-old son, John Jr., and a 4-month-old daughter, Patricia.

Defendants include Commercial Carriers, Inc., of North Kansas City. Officials said the suit was the first filed in Missouri since the State Supreme Court ruled in 1952 that a child is a living being after it is old enough for normal survival.

Girl Collects For Injury That Came Before Her Birth

Daily World
Wash. D.C.
2-13-57

INDEPENDENCE, Mo. — (INS) — A seven-year-old girl was awarded $85,000 damages Tuesday for injuries before her birth that made her blind.

P. 1

Kathy Louise Mitchell received the settlement in a half-million dollar damage suit brought in her behalf by her parents, Mr. and Mrs. George S. Mitchell. The mother was injured in a traffic accident in 1949 when she was six months pregnant.

Settlement came after a circuit court jury was selected to hear the evidence.

Birmingham Negroes Have Won Three Discrimination Issues In 15 Years

Post-Herald Fri. 6-21-57 B'ham, Ala. p. 8

BY JIM STRICKLAND

Birmingham Negroes have filed U. S. District Court complaints against alleged discrimination and segregation in eight different fields over the past 15 years.

In three fields they got what they were seeking—voiding of Birmingham's segregated zoning laws and elimination of discrimination in Jefferson County teacher's pay and employment standards on the Gulf, Mobile and Ohio and Central of Georgia Railroads.

In one case they lost the immediate objective but gained a legal principal—Autherine Lucy didn't get to stay at the University of Alabama, but the school was ordered not to keep her out merely because of race or color.

In three cases—voter registration, waiting room segregation and public housing—they were turned down.

And one subject—bus segregation—is yet to be decided.

SCHOOL TEACHERS PAY:

William J. Bolden filed suit against the School Board of Jefferson County and Supt. John E. Bryan on March 27, 1942, asking for an injunction to restrain the board from making any distinction on grounds of race or color in fixing salaries paid white and Negro teachers in county public schools.

By consent of both parties a decree was entered April 27, 1945 which called "unconstitutional and unlawful" any differential based on race or color.

Ruby Jackson Gainer, Negro teacher and president of a CIO teachers' union, asked the court in 1947 to hold the board in contempt of court because they hadn't equalized salaries. The matter was referred to a special master, Atty. Reid Barnes, who filed a 208-page report in 1953.

The report said the case for contempt had been made because of "arbitrary discrimination," but no fines were levied by the court.

ZONING LAWS:

U. S. District Judge Clarence Mullins declared three Birmingham zoning ordinances — each setting up separate white and Negro residential housing zones —unconstitutional in a Dec. 10, 1949 ruling.

The city appealed but the ruling was upheld by the U. S. Court of Appeals for the Fifth Curcuit in December, 1950.

The complaint had been filed by Mary Monk Means and 14 other Birmingham Negroes in September, 1949.

Judge Mullins' order restrained the city from "establishing or maintaining restrictions as to residential occupancy based on race or color."

In a 1947 case filed by Samuel and Essie Mae Mathews against the city, Judge Mullins had issued an injunction which applied only to the Mathews, and to the North Smithfield lot on which they had built a house.

RAILROAD EMPLOYES:

At least two rulings have been given on this subject. One was May 2, 1950 in the case of Matt Mitchell and 26 other Negro firemen against the GM&O and the Brotherhood of Locomotive Firemen and Enginemen.

The other decision, on Oct. 29, 1954, was in the case of Odell Jones and 59 other Negro switchmen and brakemen against the Central of Georgia and the Brotherhood of Railroad Trainmen.

Both decisions were appealed and both were upheld by the Court of Appeals.

The decisions forbade discriminatory practices against the Negro employes and ordered that the union and road maintain a "non-discriminatory system of job assignments and training therefore."

HIGHER EDUCATION:

The Autherine Lucy case against the University of Alabama ended with the Negro student on the outside, but because of defamatory charges she made against school officials and not because of her race.

A court prohibited University officials from denying admittance to Autherine Lucy because of her race or color.

She was parmanently expelled by the University board of trustees Feb. 29, 1956 after she charged that officials had conpired with the mob that drove her from the campus after three days of classes.

VOTER REGISTRATION:

W. L. Patterson filed his complaint against county registrars on Aug. 20, 1942. He claimed $500 damages for the denial of his right to be registered as a voter and asked a permanent injunction to prevent further denial.

Patterson had applied for registration on June 27, 1942, the complaint said, and had filled out the regular form, read passages from the Constitution, answered questions asked him and presented a tax receipt on property he owned.

After a trial May 29, 1945 before Judge Mullins, a jury returned a verdict for the defendants.

WAITING ROOM SEGREGATION:

This case, dismissed March 4, was filed by Carl L. and Alexinia Baldwin, a Negro couple arrested in December as they sat in a "white and interstate" waiting room at Terminal Station.

The city charges against the couple were dropped, however, on Feb. 25.

Judge Seybourn H. Lynne ruled in March that the case had assumed a hypothetical character since there was no real controversy in the issue.

"The long and the short of the matter is that a mistake apparently was made in arresting these plaintiffs," his opinion said. "No good purpose would be served by prolonging this baseless litigation."

Judge Lynne's decision has been appealed by the Baldwins to the Circuit Court of Appeals in New Orleans.

PUBLIC HOUSING:

A complaint brought by 18 Southside Negro against the Housing Authority of the Birmingham District was dismissed by Judge Lynne Nov. 30, 1956.

Their complaint asked that the housing authority be restrained from following "a policy of racial segregation" in its six low-rent projects.

The action was dismissed because the plaintiffs fell into "two well-defined classes" — tenants and home owners—and the relief grant to the tenants would not be applicable to the owners.

BUS SEGREGATION:

This suit, filed Jan. 14 by 21 Negroes arrested by the city for violating city segregation laws, is still pending in Federal Court. The Negroes were convicted of the city charge and fined $50 each March 21.

Birmingham Transit Co. and the commissioners of the City of Birmingham are defending in this case, and have filed answers to the complaint.

The case will be set for a pretrial hearing and then for trial within the next few months.

12b 1957

LOUISIANA
DECLARED UNCONSTITUTIONAL ALL CITY AND STATE LAWS SEGREGATING RACES IN CITY PARK, STREET CARS AND BUSES IN NEW ORLEANS

New Orleans Constitution

Segregation Ruled Void

Case Involves Park, Street Cars, Buses

NEW ORLEANS, May 15 (AP)—U.S. Dist. Judge J. Skelly Wright today declared unconstitutional all city and state laws calling for segregation of the races in City Park, and on street cars and buses in New Orleans.

Wright said he will issue permanent injunctions to stop enforcement of the laws. Attorneys for the city said they had been informed by the court the injunction would not be issued until all appeals are exhausted.

Lawyers representing the city said they will appeal.

Judge Wright ruled after hearing arguments in the two separate cases.

The City Park case came to court today on a motion by William P. Schuler, assistant attorney general for Louisiana, to dismiss it.

The state intervened several weeks ago at the direction of the court.

Wright said the questions of law involved in the City Park case were settled by previous rulings.

New Orleans, La.

Courier p 2

Must Integrate Buses and Parks

Pittsburgh Pa.

Oct. 5-25-57

NEW ORLEANS—Racial segregation was defeated on two separate fronts last week when the United State District Court, Judge J. Skelly Wright, presiding in consecutive actions, ordered the city of New Orleans and the N.O. Public Service, Inc., to desegregate the public bus and street car system, and directed the N. O. City Park Improvement Association to discontinue a policy of refusing Negroes the right to use City Park facilities.

12b 1957

COMPENSATION CASE DIVIDES HIGH COURT

Commercial Appeal P 11

Mississippi Justices Split On Payment To Negro

Tues. 3-26-57

OTHER DECISIONS LISTED

Memphis, Tenn.

From The Commercial Appeal
Jackson, Miss., Bureau

JACKSON, Miss., March 25. — Usually unanimous in cases involving workmens' compensation, the Mississippi Supreme Court split six to three Monday in reversing a lower court and awarding benefits to dependents of a Negro sawmill hand who died on the job.

Justice Olney Arrington wrote the majority opinion reversing the Franklin County Circuit Court's refusal to grant death benefits to the family of Ed Lee. Lee died 15 minutes after reporting for work on a tree-cutting gang for the Haltom Lumber Co. of Roxie.

McGehee One Dissenter

Justice Robert Gillespie wrote the dissenting opinion which he was joined by Chief Justice Harvey McGehee and Justice W. N. Ethridge Jr.

The court has been accused by the Mississippi Manufacturers Association with being "too liberal" in upholding workmens' compensation cases, causing higher insurance rates for coverage in Mississippi. The MMA said the liberal position of the court was hurting Mississippi industrial development.

Justice Percy Lee wrote the opinion upholding the Pontotoc County Circuit Court in voiding a building permit given O. A. Cannon by the mayor and board of aldermen of Pontoc. V. V. White and other residents had protested the permit for an addition to a storehouse violated a residential zoning ordinance in that structural alterations were planned rather than "mere variations" in the building.

New Trial Is Ordered

Justice Lee Hall wrote the opinion ordering a new trial in a damage suit arising from an auto-truck collision in Monroe County. The lower court held that Clyde Hill and the driver of a Columbus Ice Cream and Creamery Co. truck were both at fault and awarded no damages. The court said Monday the issue should be retried because of conflicting instructions given the jury.

Decisions handed down Monday follow—

By Justice W. N. Ethridge Jr.—

H. H. Myers vs. Jerry Nell Brumfield Laird et al, Walthall Chancery, affirmed.

Guy Avera et al vs. Turner Lumber Co. and L. O. McMillan, Greene Chancery, suggestion of error overruled.

By Justice Olney Arrington—

Hester Lee and Mary Emma Shorte vs. Haltom Lumber Co. and United States Fidelity and Guaranty Co., Franklin Circuit, reversed and remanded.

By Justice James G. Holmes—

W. E. Snowden and Mrs. Alice Rawlings vs. J. L. Skipper, Lauderdale Circuit, reversed and remanded.

By Justice John Kyle—

Jane Garrison Gardiner vs. J. Lyon Gardiner, Jones Chancery, affirmed on direct appeal and on cross-appeal.

D. G. Mason vs. Gaddis Farms Inc., Hinds Chancery, affirmed.

By Justice Percy Lee—

The Mayor and Board of Aldermen of Pontotoc vs. V. V. White et al, Pontotoc Circuit, affirmed.

Lula Ann Triplett vs. State, Neshoba Circuit, affirmed.

Theo Friedhoff vs. City of Biloxi, appellant's motion to advance overruled.

By Justice Lee Hall—

Clyde Hill vs. Columbus Ice Cream and Creamery Co., Monroe Circuit, reversed and remanded.

Earl Jolly vs. State, Leake Circuit, affirmed.

By Chief Justice Harvey McGehee—

Jackson Ready-Mix Concrete and Western Casualty and Surety Co. vs. Ernest Young, Hinds Circuit, affirmed.

Mrs. Bernice Jenkins vs. Bill Bates, Lee Chancery, suggestion of error overruled.

C. B. Moak et al vs. John M. Black, Warren Circuit, suggestion of error overruled.

Biloxi-Pascagoula Real Estate Board et al vs. Mississippi Regional Housing Authority No. 8, et al, motion to dismiss appeal sustained because of insufficiency of the appeal bond.

Accident Victim Awarded $40,000

BROOKLYN, N Y. — (ANP) — A jury awarded a Brooklyn foundry worker $40,000 damages Monday in a weeklong trial in Brooklyn Supreme court. The plaintiff, Robert Brooks, 28, sued the Transit Authority for $100,000 for injuries received in a freak accident. The defendants said they would consider filing an appeal.

Through his attorney, Irving Jozefsberg, Brooks, claimed that he became deaf in one ear and lost all feeling in his left side as a result of a high voltage trolley bus wire falling on his automobile. The accident occurred Dec. 7, 1955. It was reported that when the wire snapped and struck Brooks' car there was an explosion and a flash of light. The driver was taken to Kings County hospital after emergency workers removed the wire.

The doctors in his case claimed he was suffering from a "Conversion reaction" or traumatic neurosis caused by emotional shock he suffered when the wire struck his automobile.

12b 1957

WISCONSIN SUPREME COURT

Doesn't Say 'Times Have Changed'

Herald, Miami, Fla.

Wisconsin Court Rules on Integration

Thurs. 4-18-57

BY DAVID LAWRENCE

p. 4a

WASHINGTON — Wisconsin's Supreme Court has just distinguished itself by doing something which just a few years ago would not have merited any notice whatsoever.

LAWRENCE

The court actually examined the laws of Wisconsin and couldn't find anything in them that says unions must accept Negroes in their membership.

So the court decided that, while it is just too bad that such discrimination exists, it isn't a violation of the law of the state nor of the 14th Amendment to the Constitution of the United States.

Now, the members of the court could have reached around the world and found many a writer on sociological subjects who would have told them that failure to include Negroes in a voluntary organization of any kind is psychologically bad and creates a feeling of "inferiority" among those who are the victims of discrimination.

The court would have said that sociology is more important than law and that times have changed anyway.

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THE COURT, didn't do or say any of these things because the six judges, led by Judge Timothy Brown, who rendered the opinion, simply felt that they were bound to stick to what the law said. If it omitted anything, they were not supposed to supply it.

True enough, Judge E. T. Fairchild, the sole dissenting judge — who perhaps will be regarded by some observers as more "modern" than the others — did say the remedy should be supplied anyhow by the court.

★ ★ ★

JUDGE FAIRCHILD is at least candid about what he would do. He has behind him, of course, the precedent established by the Supreme Court of the United States, which—in the desegregation decision of May 1954 — brushed aside rules of law, precedents, previous decisions and decided the case on a sentimental basis.

Judge Brown pointed out that, from the language of the 14th Amendment, "it would seem to be clear that only discrimination by state action is within its contemplation."

If the Supreme Court of the United States upholds that interpretation, it means that bus lines operated privately or schools or social clubs which exclude persons for racial or religious reasons are on safe ground in doing so.

12d 1957

Fifth Amendment, Protector of Rights Of Both Innocent Men and Scoundrels

News & Observer Sun. 5-5-57 Raleigh, N.C. p. 3

By BEM PRICE.

WASHINGTON, (AP)— "I must decline to answer that question because of my right and privileges as granted by the Fifth Amendment to the U. S. Constitution . . . "

And so another witness joins the long parade of those who have sought refuge in the Fifth Amendment over the last eight years.

Avoids Answers.

Most often the witnesses have used the amendment to avoid answering question by congressional committees investigating spy rings, Communist operations and assorted criminal rackets.

One result of this almost wholesale resort to the protection of the Fifth has been to bring the amendment itself into disrepute. When a witness pleads the Fifth Amendment the public tends to assume he is guilty of something.

Even President Eisenhower said at a news conference March 27, "I must say I probably share the common reaction if a man has to go to the Fifth Amendment there must be something he doesn't want to tell."

The President made the comment when asked about Teamsters Union President Dave Beck, who had invoked the Fifth on more than 100 questions put to him at a Senate subcommittee hearing on labor racketeering.

But there is another interpretation o fthe Fifth. It is outlined in a leading treatise on evidence by the late Prof. John Henry Wigmore, dean of the law school at Northwestern University. Said Wigmore in an oft-cited passage:

"The simple and peaceful process of questioning breeds a readiness to resort to bullying and physical force and torture. If there is a right to task a question, there soon seems to be a right to the expected answer: that is, a confession of guilt.

A "reluctant witness" hides behind a facsimile of the Bill of Rights amendments to the Constitution as originally proposed to Congress in this posed symbolic picture. The Fifth Amendment actually was the Seventh Article proposed but it became the fifth when the first two failed to pass. Constitutional lawyer David K. Watson of Columbus, Ohio, once wrote that the Fifth "is the greatest of the original amendments." However, its constant use by witnesses before congressional investigating committees has led to a public assumption of guilt by a witness availing himself of its protection. (AP Newsfeature Photo).

In brief, the Fifth is your protection against the so-called third degree, the rubber-hose method of extorting confessions used by some police.

In case you have forgotten, the Fifth Amendment reads in part: "No person . . . shall be compelled in any criminal case to be a witness against himself. . ."

Wrapped up in the full amendment is your guarantee against continuous persecution, arbitrary arrest, outright confiscation of your property, forced confessions.

One of the outstanding constitutional lawyers of the past 50 years, David K. Watson of Columbus, Ohio, once wrote: "This is the greatest of the original amendments. It secures to the citizen certain rights without which society could not endure, nor the state survive."

The Fifth is an individual protection. The right to refuse to self-incriminate exists only for natural persons, not for corporations.

Further, the U. S. Supreme Court has held it is a purely personal privilege. A witness may not take the Fifth because some other person might be incriminated.

In addition, the Supreme Court has held that the Fifth does not automatically protect a witness in matters which incriminate. If a witness wants the protection of the Fifth he must claim it specifically.

Court Cases.

Most of the appeals to the Fifth's protection have arisen out of court cases, but eight years ago the complexion of the witnesses who used the Fifth began to change.

During the investigations into crime by the Senate special subcommittee headed by Sen. Estes Kefauver D-Tenn. one racketeer after another resorted to the amendment.

Then Congress began uncovering evidence that a Communist spy ring operated during World War II. The public was treated to the spectacle of people in positions of public trust taking refuge in the Fifth to avoid answering questions about their relationship to the Soviet-inspired ring.

At face value the Fifth is vital protection for the innocent, yet somehow it has become a haven for those who would duck questions concerning public welfare and national security.

Undoubtedly the present parade of Fifth Amendment users will continue, particularly as Congress probes deeper into the rackets which plague the nation.

The doctrine that a man doesn't have to give evidence that would incriminate him is rooted deep in English common law. As far as it can be traced, the doctrine was first enunciated in 1850 in an "opinion of nine most learned doctors of civil law." It did not become law for another 60 years however.

The matter of self-incrimination arose primarily in connection with the religious struggles between the entrenched Church of England and the Puritans and Quakers.

The doctrine against self-incrimination was brought to America by the Founding Fathers. Even before 1789, when the United States came into being, seven states had clauses in their constitutions against forcing a man to swear to his own hurt.

When the Constitution was drawn, however, and sent to the 13 colonies for ratification in 1787 there was no mention of the doctrine. Four states proposed in their ratifying conventions that it be made a part of the organic law.

At the time of the first Congress the matter came up for inclusion in the first 10 amendments—the U. S. Bill of Rights. The proposal was made by James Madison of Virginia, later the fourth president of the United States.

12d 1957

"The Nine Strong Men"

Journal & Guide

Experience, Confidence Mark Three Newest Court Justices

Norfolk, Va. Sat. 1-20-57

(Editor's Note:—This is the last of three articles on the justices of the U. S. Supreme Court whose recent historic decisions on issues involving individual freedoms have imposed severe restrictions on the investigative and punitive powers of Congress and the Executive Branch.)

By JAMES LEE

WASHINGTON—(INS)—A fighting Irishman who used to be a milkman, a prohibition era foe of bootleggers, and a Kansan who once earned his keep by trapping skunks are the three newest members of the United States Supreme Court.

All three were appointed by President Eisenhower. One is a Democrat and an avowed liberal. The others are Republicans with strongly conservative leanings.

* * *

IN ORDER OF THEIR appointments to the high bench, they are:

John Marshall Harlan, 58, who took the oath of office March 28, 1955. As a prohibition enforcement prosecutor he was a nemesis of bootleg kings and beer barons in the wild 1920's.

William J. Brennan Jr., 51, who got his start in life as a Newark, N. J. milkman. He took his seat on the court last Oct. 16.

Charles E. Whittaker, 56, Kansas City, Mo., lawyer and judge who was named to the tribunal last March 2 to succeed Justice Stanley Reed, retired.

Harlan and Whittaker are Republican appointees. Brennan is a big city Democrat who has never been afraid to assert his independence of political machines.

Unlike most of the other members of the Supreme Court, all three of the "newcomers" have had judicial experience.

* * *

HARLAN BEARS A NAME famous in the annals of the court. His grandfather, John Marshall Harlan, served on the Supreme bench from 1877 to 1911. The 34-year span is the second longest in Supreme Court history.

A native of Chicago and a graduate of Princeton, Harlan entered public service as an assistant U. S. Attorney in New York in 1925. He was assigned to prohibition law enforcement cases and was celebrated as the prosecutor who sent Showman Earl Carroll to prison.

Carroll was convicted of violating the Volstead Act by acting as host at a memorable party during which one of the young lady guests dunked herself in a bathtub full of champagne.

IN NEW YORK, Harlan served under the late Gov. Al Smith as special prosecutor in connection with the Queens County sewer scandals; he also served under ex-Gov. Thomas E. Dewey as chief counsel to the New York State Crime Commission. His renown as a racket buster rivaled Dewey's

In 1954, Harlan left his six-figure job as a member of the New York law form of Root, Ballantine, Harlan, Bushby and Palmer to accept appointment from Mr. Eisenhower as a judge of the U. S. Court of Appeals.

One year later, he was named to the Supreme Court. Lawyer-like, he has been feeling his way, making no attempt to identify himself with either the openly liberal bloc or the conservative group, which appears to be in the minority.

* * *

FRIENDS PREDICT, however, that Harlan will become one of the most forceful members of the court—in a conservative direction. There is no room for doubt as to his zeal. He demonstrated that as a U. S. Air Force colonel in World War II, winning America's Legion of Merit and France's Croix De Guerre.

Brennan, whose appointment came as a surprise, made news before he took office. The late Sen. Joseph R. McCarthy (R) Wis., who found Brennan much too liberal for his taste, violently assailed the nomination and sought to block Senate confirmation. In a sense, the Brennan issue was McCarthy's last battle, a losing one.

* * *

THE ELEVATION TO the Supreme bench came after Brennan had served for four years as an Associate Justice of the New Jersey Supreme Court.

Though he was comparatively unknown on the national level when Mr. Eisenhower nominated him as his first Democratic appointee to the Supreme Court, Brennan, the tribunal's youngest member, lost little time in making headlines.

He wrote the majority opinion earlier this month which decreed that the government must either bare secret FBI reports that form the basis of testimony of prosecution witnesses in a criminal trial or dismiss the case.

* * *

THE DECISION, denounced by a number of Congressmen and officials of the Executive Branch, struck a massive blow at the ironbound tradition of the FBI that its secret files are inviolate unless in the nation's interest it chooses to disclose them.

This key passage from the opinion seems to epitomize Brennan's judicial philosophy:

"... The interest of the United States in a criminal prosecution ... is not that it shall win a case, but that justice shall be done."

Brennan, as the years go by, is expected to be known as one of the dominant liberals of the Supreme Court.

* * *

THE REVERSE, however, is expected of Whittaker, who, though he has taken a comparatively small part in this year's great decisions, has shown leanings described by court observers as "stoutly conservative."

He was born on a farm near Troy, Kan. As a lad, he earned his spending money by trapping skunks. There was no high school available near his home.

He went to work in Kansas City in 1921 as an office boy for a law firm. At night, he completed high school courses and went on to law school.

* * *

WHITTAKER PRACTICED law in Kansas City for 30 years before he was appointed a U. S. District Judge in 1954. Two years later he was promoted to the U. S. 8th Circuit Court of Appeals and his work on that bench added to the qualifications which won him appointment to the highest court in the land three months ago.

The newest justice is one of the most devoutly religious members of the Supreme Court. H is an ardent Methodist and a member of the Board of Stewards of his church in Kansas City.

Like most other Supreme Court justices, Whittaker often turns to the Bible as a source of the intellectual and patriotic stamina which makes the membership of the great bench—whether they be liberals or conservatives—"nine strong men."

12d 1957

100 Attorneys Repudiate Reckless Attacks Upon U. S. Supreme Court

Journal & Guide p. 7

Norfolk, Va.

(Editor's Note:—This statement was issued by 100 outstanding members of the bar residing in 31 states and territories of the United States.)

Oct. 1-5-57

As members of the bar we have been deeply disturbed by recent attacks on the Supreme Court of the United States. No institution of our government, including the judiciary, stands beyond the reach of criticism; but these attacks have been so reckless in their abuse, so heedless of the value of judicial review, and so dangerous in fomenting disrespect for our highest law that they deserve to be repudiated by the legal profession and by every thoughtful citizen.

The Constitution is our supreme law. In many of its most important provisions it speaks in general terms, as is fitting in a document intended, as John Marshall declared, "to endure for ages to come." In cases of disagreement we have established the judiciary to interpret the Constitution for us. The Supreme Court is the embodiment of judicial power, and under its evolving interpretation of the great constitutional clauses—commerce among the States, due process of law, and equal protection of the laws, to name examples — we have achieved national unity, a nation-wide market for goods, and government under the guarantees of the Bill of Rights.

* * *

To accuse the Court of usurping authority when it reviews legislative acts, or of exercising "naked power" is to jeopardize the very institution of judicial review. To appeal for "resistance" to decisions of the Court "by any lawful means" is to utter a self-contradiction, whose ambiguity can only be calculated to promote disrespect for our fundamental law. The privilege of criticising a full decision of the Supreme Court carries with it a corresponding obligation—a duty to recognize the decision as the supreme law of the land as long as it remains in force. There are ways of bringing about changes in constitutional law, but resistance is not such a way. Changes may be wrought by seeking an overruling decision, or by constitutional amendment. It is through the amending process, and not by resistance, that the people and the States stand as the ultimate authority.

* * *

The current wave of abuse was doubtless precipitated by the school segregation decisions, though it has by no means been limited to them. Since our position does not depend on agreement with those decisions, it is not our purpose to discuss their merits. As individuals we are entitled to our own views of their soundness. Some of us are definitely in disagreement with them.

In an Appendix we have sought to put these decisions in historical perspective and our signatures to this declaration are intended to evidence our approval of the statements in the Appendix. Our present concern is for something more fundamental than any one decision or group of decisions; our concern is for the tradition of law observance and respect for the judiciary, a tradition indispensable to the cherished independence of our judges and orderly progress under law.

The American Bar has been alert to defend the judiciary against assaults which would undermine the Rule of Law, and to make plain to the American public the dangers lurking in such challenges. In 1937, when the Court was threatened, the Bar rallied to its support as an institution, regardless of individual dissatisfaction which many felt toward important decisions of that time. We must do no less today.

The signers of this statement represent diverse political outlooks and geographical associations. We are all the more firmly united in our resolve to defend the Rule of Law against the present challenge.

Appendix

Occasionally in our history decisions of the Court have met with official resistance on the part of one or more States. No section of the country has had a monopoly on such aberrations, and in their outcome these episodes have only served to strengthen the tradition of respect for law. In 1803 the legislature of Pennsylvania asserted that a federal court had illegally usurped jurisdiction and that its decree ought not to be supported or obeyed. Reviewing this action, the Supreme Court in 1809, through Chief Justice Marshall, took note of a supposed right of interposition:

"The act in question does not, in terms, assert the universal right of the state to interpose in every case whatever; but assigns, as a motive for its interposition in this particular case, that the sentence, the execution of which it prohibits, was rendered in a cause over which the federal courts have no jurisdiction."

The answer which Marshall gave is as valid and compelling today as it was almost a century and a half ago:

"If the legislures of the several states may, at will, annul the judgments of the courts of the United States, and destroy the rights acquired under these judgments, the constitution itself becomes a solemn mockery; and the nation is deprived of the means of enforcing its laws by the instrumentality of its own tribunals. So fatal a result must be deprecated by all; and the people of Pennsylvania, not less than the citizens of every other state, must feel a deep interest in resisting principles so destructive to the Union and in averting consequences so fatal to themselves." (5 Cranch 115, 136 [1809]).

The President at the time was James Madison, whose earlier views may have given some reason to the Governor of Pennsylvania to solicit his support. But when thus approached, Madison was firm in upholding the Rule of Law. He said: "... the Executive is not only unauthorized to prevent the execution of a decree sanctioned by the Supreme Court of the United States, but is expressly enjoind, by statute, to carry into effect any such decree where opposition may be made to it." Cong. Globe, 11th Cong. 2d sess., p. 2269 quoted in J. Warren Supreme Court in United States History, p. 382).

* * *

It is unnecessary to recount additional episodes of this kind. Surmounting attacks prompted by local pressures, it was this very authority of the Court that served to foster reconciliation after the Civil War, when State and federal statutes disqualifying former supporters of the Confederacy from public and professional employment were held by the Court to be repugnant to the Constitution as bills of attainer. Thus the attacks on the power of the Court proved to be as short-sighted as they were short-lived.

Concerning the school cases themselves, it should be enough to point out that they do not warrant any departure from our tradition of respect for law. It has been said that they were a usurpation because the equal protection clause of the Fourteenth Amendment does not speak of schools and Congress had not legislated on the subject. But the equal protection clause was deliberately couched in general terms; it does not speak of jury service or transportation or any of the other specific fields in which the Court has been faced with racially restrictive laws. These problems must be resolved by the Court.

* * *

Whether as individuals we agree or disagree with the school decisions, we recognize that they were the culmination of a steady line of growth in the application of the concept of equal protection of the law, and that each stage was preceded by sincere and determined opposition. In 1880 the right of Negroes to be included on juries was established by judicial decision. In 1917 racial restrictions in municipal zoning laws were held unconstitutional, and in 1948 this principle was applied to prevent the enforcement of private racial covenants for housing. In 1927 the first of a series of cases outlawed the all-white primary under the Fourteenth Amendment.

* * *

In 1938 the first of a series of cases applied the principal of equal protection to higher education; through Chief Justice Hughes the Court held that a State did not satisfy its constitutional duty by offering to pay for a student's tuition at a non-segregated university in another state. The elementary-school cases themselves were presented in a series of oral arguments and written briefs that advanced every possible contention; the Court heard re-argument on the merits and still another argument on the form of the decree.

The cases were treated with the utmost deliberation. Recognizing the problems of adjustment in some localities, the Court left the decree to be carried out under the supervision of the district courts. The local authorities are obligated to see that the Court's decision is complied

with in good faith.

The signers of this statement were: Dillon Anderson, Houston, Tex.; Ernest Angell, New York, N. Y.; J. Garner Anthony, Honolulu, T. H.; Philip W. Amram, Washington, D. C.; Howard L. Barkdull, Cleveland, Ohio; Paul Bedford, Wilkes-Barre, Pa. Laird Bell, Chicago, Ill.; Robert M. Benjamin, New York, N. Y.; Charles L. Black, Austin, Tex.; Frank T. Boesel, Milwaukee, Wis.; George E. Brand, Detroit, Mich.; Henry Brandis Jr., Chapel Hill, N. C.; James E. Brenner, Stanford, Cal.; Joseph I. Brody, Des Moines, Ia.; Bruce Bromley, New York, N. Y.; Ralph S. Brown Jr., New Haven, Conn.; John G. Buchanan, Pittsburg, Pa.; Howard F. Burns, Cleveland, Ohio; Pierce Butler, St. Paul, Minn.; Harold G. Cant, Minneapolis, Minn.; Claude E. Chalfant, Hutchinson, Kan.; Grenville Clark, Dublin, N. H.

Herbert W. Clark, San Francisco, Cal.; Charles A. Coolridge, Boston, Mass.; Walter E. Craig, Phoenix, Ariz.; Homer D. Crotty, Los Angeles, Cal.; Carl W. Cummins, St. Paul, Minn.; Charles P. Curtis, Boston, Mass.; Paul R. Dean, Washington, D. C.; Robert Dechert, Philadelphia, Pa.; Lloyd W. Dinkelspiel, San Francisco, Cal.; James M. Douglas, St. Louis, Mo.; Daniel J. Dykstra, Salt Lake City, Ut.; Douglas L. Edmonds, Los Angeles, Cal.; William D. Embree Jr., Denver, Colo.; Morris L. Ernst, New York, N. Y.; Harold Evans, Philadelphia, Pa.; Robert J. Farley, University, Miss.; Jefferson B. Fordham, Philadelphia, Pa.; Ray Forrester, New Orleans, La.; Eugene H. Freedheim, Cleveland, Ohio; Arthur J. Freund, St. Louis, Mo.; Paul A. Freund, Cambridge, Mass.; Fred E. Fuller, Toledo, Ohio; and Robert P. Goldman, Cincinnati, Ohio.

William T. Gossett, Dearborn, Mich.; John Raeburn Green, St. Louis Mo.; Milton D. Green, St. Louis, Mo.; Albert J. Harno, Urbana, Ill.; James P. Hart, Austin, Tex.; Paul M. Herbert, Baton Rouge, La.; William M. Hepburn, Emory University, Ga.; Allan A. Herrick, Des Moines, Ia.; Charles A. Horsky, Washington, D. C.; Charles B. Howard, Minneapolis, Minn.; Palmer Hutcheson, Houston, Texas.; William S. Jackson, Denver, Colo.; Charles W. Joiner, Ann Arbor, Mich.; William J. Kenealy, New Orleans, La.; Allen T. Klots, New York, N. Y.; Barton H. Kuhns, Omaha, Nebr.; Mason Ladd, Iowa City, Ia.; Cloyd LaPorte, New York, N. Y.; Jacob M. Lashly, St. Louis, Mo.; Monte M. Lemann, New Orleans, La.; William B. Lockhart, Minneapolis, Minn.; Alan Loth, Ford Dodge, Ia.

Thomas D. McBride, Philadelphia, Pa.; William L. Marbury, Baltimore, Md.; Jesse E. Marshall, Sioux City, Ia.; Maurice H. Merrill, Norman, Okla.; Theodore R. Meyer, San Francisco, Cal.; Arthur S. Miller, Emory University, Ga.; Frederic M. Miller, Des Moines, Ia.; James R. Morford, Wilmington, Del.; Edmund M. Morgan, Nashville, Tenn.; Charles E. Nieman, Minneapolis, Minn.; Arthur L. Newman, New York, N. Y.; John Lord O'Brian, Washington, D. C.; A. E. Papale, New Orleans, La.; Benjamin M. Parker, Atlanta, Ga.; George Wharton Pepper, Philadelphia, Pa.; Maynard E. Pirsig, Minneapolis, Minn.; John Carlisle Pryor, Burlington, Ia.; Frank J. Remington, Madison, Wis.; Alvin J. Rockwell, San Francisco, Cal.; James Grafton Rogers, Georgetown, Col.; Eugene V. Rostow, New Haven, Conn.; Murray Seasongood, Cincinnati, Ohio; Whitney North Seymour, New York, N. Y.

Ethan A. H. Shepley, St. Louis, Mo.; Joseph H. Stamler, Newark, N. J.; E. Blythe Stason, Ann Arbor, Mich.; Charles M. Storey, Boston, Mass.; Robert G. Storey, Dallas, Tex.; Sidney F. Strongin, Brooklyn, N. Y.; George W. Stumberg, Austin, Tex.; Frank J. Sulloway, Concord, N. H.; Benjamin J. Swisher, Waterloo, Ia.; Charles P. Taft, Cincinnati, Ohio; Henry J. Te Paske, Orange City, Ia.; Harrison Tweed, New York, N. Y.; Robert W. Upton, Concord, N. H.; George S. Van Schaick, Binghamton, N. Y.; Robinson Verrill, Portland, Me.; Leon H. Wallace, Bloomington, Ind.; William C. Warren, New York, N. Y.; Olin E. Watts, Jacksonville, Fla.; Bethuel M. Webster, New York, N. Y.; Roy E. Willy, Sioux Falls, S. D.; Francis E. Winslow, Rocky Mount, N. C.; Julius J. Wuerthner, Great Falls, Mont.; and G. Aaron Youngquist, Minneapolis, Minn.

Justice Reed Steps Down

The retirement of Justice Stanley F. Reed is another sharp reminder of the transformation that the Supreme Court is undergoing. Only three of the so-called nine young men appointed by President Roosevelt remain in the harness—Justices Black, Frankfurter and Douglas. Justices Murphy, Rutledge and Jackson as well as Chief Justice Stone are dead, and Justice Byrnes has had an extensive governmental career since he left the bench. Only two of President Truman's appointees remain—Justices Burton and Clark. Justice Reed's retirement will thus give President Eisenhower a chance to name a fourth Justice to the Supreme Bench.

When Mr. Reed took his seat 19 years ago yesterday, he was widely acclaimed as a "New Dealer" who would help to usher in a new era of constitutional interpretation. As Solicitor General of the United States, he had been the chief legal champion of the Roosevelt legislative program in the Supreme Court. Many of the cases he had argued had been decided against the Government. His nomination was everywhere interpreted, therefore, as a move to enthrone the legal views of the Solicitor General over those of the "old Court."

For a time Justice Reed seemed to live up to this reputation by frequent dissents in company with Justice Black. As the years passed and new problems came before the Court, however, he disagreed more frequently with the liberals and came to be recognized as the leader of the conservative bloc. Some of his friends have been critical of him for this reason, but Justice Reed insisted on following his convictions as an independent judge. For this he deserves only commendation.

Some of the disappointment expressed by his friends seem to be based on a misconception of the role of a judge. It is very different from that of an executive and from that of a practicing lawyer. As chief legal officer for the Roosevelt Administration, Mr. Reed threw himself wholeheartedly into defense of the New Deal recovery acts, as any conscientious Solicitor General was obliged to do, even though some of the legislation had been carelessly drafted from the constitutional point of view. On the bench he was no longer the advocate but the judge. Naturally his mental processes worked somewhat differently, as in the case of all judges who are true to the spirit of independent judicial craftsmanship. Friends who think that the New Deal concepts for which he fought as a lawyer should have been more strongly reflected in his judicial thinking ought to remember that he also served the Hoover Administration in eminent legal positions.

Certainly Justice Reed was not an extreme conservative. Rather, most of the judicial tracks he has left will be found somewhere near the middle of the road—probably, as one commentator said, on the right side of the middle. Though he has not been as lenient to defendants in civil rights cases as some of his brethren, he joined in the Court's historic decisions which doomed segregation in the schools. In another momentous case in which the Court upset President Truman's seizure of the steel mills, Justice Reed dissented.

In point of work accomplished and knowledge of the law Mr. Reed has been one of the Court's most valuable members. Though never spectacular, his opinions are clear and closely reasoned. Some lawyers think he has tended to decide too many issues not essential to disposition of the case at hand and that he has too frequently leaned toward acceptance of the Government's point of view. But these comments merge into a general appreciation of his stature as a judge, as a practicing lawyer, as a counselor in matters of public policy and as a man. His achievements will doubtless give the President a special sense of obligation to choose a worthy successor.

Going Back to Farm

Reed Cites Age In Quitting Supreme Court

WASHINGTON —(INS)— Supreme Court Justice Stanley Reed said Thursday he is retiring from the high tribunal Feb. 25 because at 72 he feels too old for the close concentration required by momentous cases.

He made the statement to reporters after President Eisenhower announced the Kentucky Democrat's decision to retire from the high court, to which he was appointed by the late President Franklin D. Roosevelt exactly 19 years ago.

REED

Both Mr. Eisenhower and Chief Justice Earl Warren gave Reed unstinted praise. The President hailed his "long and splendid record in public service." Warren said Reed "has made a great contribution to the court." Reed retires on full pay of $35,000 a year.

The White House was mum on a possible successor. The names of Secretary of State John Foster Dulles, Atty. Gen. Herbert Brownell Jr. and Ex-Gov. Thomas E. Dewey of New York figured in speculation.

The vacancy will give Mr. Eisenhower his fourth opportunity to appoint a member of the high bench. His previous appointees were Warren and Justices John Marshall Harlan and William Brennan. Reed's retirement will leave the court with five Democrats and three Republicans.

Justice Felix Frankfurter, 74, is the only member of the court older than Reed.

Reed said he expects to devote much of his time to tobacco and dairy farm at Mayfield, Ky., and to agricultural problems. But he quipped that he had no wish to "become an assistant" to Secretary Ezra Taft Benson.

Before his appointment to the Supreme Court, Reed held high posts in both the Hoover and Roosevelt administrations.

He added: "My judgment and experience are not a substitute for a knowledge of the history, law and facts surrounding the myriad of particular issues presented."

The Kentuckian told newsmen: "I'm retiring simply because I'm 72 years old. The strain of close concentration on important cases no longer seems wise."

12d 1957

Supreme Court Upsets Grunewald Conviction

The Supreme Court unanimously threw out the 1955 tax-fix conviction of Henry W. (The Dutchman) Grunewald yesterday, but told the Government it could try him again.

The Justice Department had "no comment" on whether it would make another try at prosecuting the former Washington influence peddler, whose name kept popping up in House investigations of tax scandals during the Truman administration. A 10-count indictment charging Grunewald with lying to House investigators was dropped by the Government two years ago. Still pending in Baltimore is another case charging Grunewald with failure to pay $96,000 of his own taxes.

Also thrown out by the Supreme Court as part of the Grunewald case were convictions of Daniel A. Bolich, former Assistant Commissioner of Internal Revenue, and Max Halperin, New York lawyer. The three were convicted of conspiracy to stop tax prosecution of two New York firms.

Supreme Court to consider Alabama's $100,000 contempt fine levied on NAACP. Page A8.

Grunewald allegedly was paid $100,000 in 1948 and 1949 to stop Government action against Patullo Modes, a dress firm, and $60,000 to stop the case against the Gotham Beef Co.

Major Question

Major question before the Supreme Court was whether the statute of limitations had run out before the three were indicted in 1954. This law forbids prosecution more than three years after a crime is committed.

The Government tried two arguments. One was that part of the conspiracy was to keep the "fix" quiet so Grunewald and the other two would escape prosecution. To this extent they were still conspiring when indicted, the Government said.

The Supreme Court threw out this argument on the ground that it would in effect wipe out the statute of limitations in all conspiracy cases. All conspirators try to cover up their tracks, the Court said.

The Government's second argument was that the conspiracy continued for three years after the 1949 "fix" to protect the two firms from prosecution in the case.

The Supreme Court said this argument was all right if it could be sure that this was the line the jury followed in convicting the three men. But the trial judge's charge to the jury was not sufficiently clear on the distinction between these two points, the Court felt.

"Since under the judge's charge the convictions . . . might have rested on an impermissible ground, we conclude that they cannot stand and the petitioners must be given a new trial as to this count," the Court said.

Rights Infringed

The Court also held that Halperin's constitutional rights were infringed at the trial when the Government was allowed to bring out that he had invoked the Fifth Amendment before the grand jury on some questions which he answered "in a way consistent with innocence" in open court. The trial judge said the jury could consider this in judging Halperin's credibility.

The Supreme Court said that under the circumstances of the Halperin case the Government should not have been permitted to make this point. Halperin was forced to appear before the grand jury without counsel or the right to examine witnesses.

Four members of the Court—Chief Justice Earl Warren and Justices Hugo L. Black, William O. Douglas and William J. Brennan Jr.—said they would have gone further and stated that under no circumstances could use of the Fifth Amendment be used to "discredit or convict a person who asserts it."

Supreme Court Criticized In Talk To Girl Staters

A Birmingham insurance offical told the 270 delegates to Girls' State here yesterday that it's time businessmen and industrialists were put on the Supreme Court of the United States.

The assertion was made by Dr. James Brakefield, public relations counsel for the Liberty National Life Insurance Co. He said the Constitution of the United States is so simply written that it can be understood by "any ninth grade student," and that there is no requirement that court members be lawyers.

Brakefield won a solid round of applause with a "curtain call" at the end, after an address in which her further criticized the court by declaring:

"There was a time when I walked into the Supreme Court building in Washington and removed my hat in reverence. But I no longer have that reverence."

He made no allusion to any specific decision of the court which has ruled against Alabama and other Southern states consistently during the past three years, particularly on racial issues.

Brakefield, one of Birmingham's best-known speakers, also hit at Communism and said only one nation in the world which has persecuted Jews has survived for any length of time. He added that "if the leaders in the Kremlin keep their present course, they soon will crush themselves."

Dr. Brakefield congratulated Ann Small of Montgomery, who was elected governor of Girls State Wednesday.

Miss Small was inaugurated last night in a ceremony at which Chief Justice J. Ed Livingston of the Alabama Supreme Court presided.

Tommy Crawford, Fort Deposit, governor of Boys State, was guest at the Girls State inaugural banquet where Micki White, Athens, also was sworn into the office of lieutenant governor.

Earlier yesterday, the 217 delegates to the convention met in a legislative session at the Capitol and hotly debated a bill which House, instructed the girls in legislative procedure before they gave vigorous pursuit to the business of passing bills.

Both the Girls State House and Senate quickly passed a measure allowing women to serve on juries.

Development of inland waterways slid through both houses but was almost as quickly vetoed by Gov. Small because of a technicality.

A move to hold a constitutional convention and rewrite the state constitution was killed despite pleas from Elizabeth Maxwell, Northport, that "we need a new constitution."

The session adjourned in the middle of the fight for three more cents on soft drinks when the conclave was called to hear the address by Dr. Brakefield.

Today, Girls Staters will tour the Capitol, State Highway Department, the executive mansion and other state, county and city offices.

Stunt night and graduation from the convention are on tap tonight.

Supreme Court: 2 Big Decisions

The United States Supreme Court last week handed down two ground-breaking decisions. One ruled that the Government must produce FBI reports that are used as prosecution testimony in a criminal case, or dismiss the case. The other extended the ban on "horizontal" business mergers—those between competitors—to include "vertical" mergers that also tend to lessen competition.

In the FBI case, the court was clearly reasserting its concern over rights of persons which it has stated repeatedly in recent years. Its decision meant a new trial for Clinton Jencks, an organizing official of the Mine, Mill and Smelter Workers, who had been convicted of filing a false non-Communist oath in violation of the Taft-Hartley Act. The FBI's witnesses against Jencks were Harvey Matusow and J. W. Ford, both paid informers of the Justice Department (Matusow subsequently swore there was no basis for his statements against Jencks).

The Supreme Court's 7-1 decision ruled that the Federal District Court judge was in error in refusing to grant a defense plea that the Government be forced to produce for inspection the reports Matusow and Ford made to the FBI.

Justice Tom Clark, a former Attorney General and the sole dissenter, said that the intelligence agencies "may as well close up shop" if criminals are to be allowed to rummage through "vital national secrets."

But the majority opinion, quoting from a case decided some years ago, summed it up this way: ". . . the interest of the United States in a criminal prosecution . . . is not that it shall win a case, but that justice shall be done. . . ."

The du Pont-GM Case

The other decision called for a splitup of one of the greatest industrial empires, the du Pont Co. and General Motors. It left up to the court of original jurisdiction the task of determining how du Pont should divest itself of its 23 per cent of GM stock.

Antitrust policy, which over the years has been quite flexible, is based on two laws—the Sherman Act of 1890 and the Clayton Act of 1914. The former was designed to break up monopolies, the latter to prevent their inception. The du Pont case was brought under section 7 of the Clayton Act.

Justice Brennan, writing the majority opinion, held that: "The first paragraph of section 7 . . . plainly is framed to reach not only the corporate acquisitions of stock of a competing corporation . . . but also . . . any corporation, competitor or not, where the effect may be either (1) to restrain commerce in any section of the community; or (2) tend to create a monopoly of any line of commerce."

Justice Brennan said du Pont's position as a major GM supplier was not achieved until after its purchase of a large block of GM stock in 1917. Immediately afterward, he said, du Pont became GM's supplier of paints and fabrics, tending to lessen competition.

Time Magazine Nullifies Supreme Court

FOR the past three years, since the May 17, 1954 Supreme Court decision, Northern publications have been chiding the South for its talk—much of it unquestionably visionary—of defying the highest court in the land.

The Supreme Court, the line goes, has spoken and that's that, a simplification that ignores dozens of previous examples in history when states and individuals defied the court. It ignores also the frequency of congressional action overturning Supreme Court decisions by legislation.

Now comes *Time* magazine, which has viewed the South's defiance with alarm, to do some remarkable nullifying of its own. For instance:

The court said in the case of New York City Attorney Max Halperin that the trial judge erred in permitting the lawyer's use of the Fifth Amendment to be cited against him at his trial. A number of "pundits," *Time* said, interpreted the Supreme Court's ruling as speaking out against the popular tendency to assume that a witness "must be guilty of some wrongdoing if he invokes the Fifth . . ."

Time, which has upheld the President's view that "if a man has to go to the Fifth Amendment, there must be something he doesn't want to tell," said:

> Some of the Supreme Court's language gave color to the idea that the court was reaching beyond a rule of law in an attempt to set a pattern of social behavior.

★

IF THIS sounds familiar to Southerners, so does *Time's* nullifying paragraph that follows:

> If the Supreme Court was in fact trying to tell the U.S. public how it should react toward Fifth Amendment pleaders, then the court had overstepped its legal province to become a social arbiter . . . A good many U.S. citizens will probably go right along with the point made by Sidney Hook, chairman of philosophy at New York University [who sides with the President's recently expressed view and thus disagrees with the Supreme Court].

★

THAT was in the June 10 *Time*. The following week *Time* was even more rebellious, devoting more than 3½ pages, in two sections of the magazine, to its own dissents from the Supreme Court's rulings in the Jencks and Du Pont cases. It appeared to be the launching of a major editorial offensive against the "liberalism" of the Warren court.

The court's decision in the Du Pont case, holding that the company's ownership of 23% of the stock of General Motors was an illegal monopoly, "stretched the Clayton Act so far that even the government trustbusters gasped," *Time* said.

The action "surprised the defense" as it "shocked the government." The majority decision had taken a "highly selective, hotly debatable set of facts and used them to . . . lay down a sweeping rule of law."

Charging the court with "legal idealism" at the expense of "legal realism" *Time* sharply reminded the court of its "responsibility to carry out the U.S. law as it is, not as it ought to be under the precepts of liberalism or conservatism or any other political philosophy."

★

REFERRING the reader to its "Business" section, *Time* re-tried the Du Pont case and decided in favor of the defendant. In effect Chief Justice Henry Luce upheld the dissenting view of Justice Harold H. Burton in the lower (Supreme) court.

In the second case overturned by *Time* in its June 17 decrees, the Supreme Court had granted a new trial to Defendant Clinton E. Jencks, Southwestern official of the Mine, Mill & Smelter Workers. Jencks had been sentenced for perjury after signing a non-communist affidavit under the Taft-Hartley law. In reversing his conviction, the Supreme Court had said that the defendant in government cases has a right to examine secret FBI evidence used against him. This ruling, *Time* said, "knocked over applecarts all across the U.S. security scene." Seeming to side with the lone dissenter, former U.S. Atty. Gen. Tom Clark, *Time* said of the Du Pont and Jencks rulings:

> In a sense . . . the cases fell into the pattern set by the Supreme Court in its school-desegregation decisions. There, many friends of desegregation were pained in their belief that the court relied on sociology texts instead of lawbooks and the Constitution of the U.S., believed the same points could have been more firmly made through purely legal reasoning.

★

BUT, in its pitch for "legal realism" as opposed to "legal idealism," *Time* seems to say that the application of the former would have resulted in opposite rulings in the Jencks, Du Pont and Fifth Amendment rulings, but the same in the school cases.

We will not try to out-speculate *Time* on that. But Luce's nullifications illustrate once again that it all depends on whose ox is gored.

Senate Votes Bill to Guard FBI's Secrets

Action Is Nearly Unanimous; House Measure Up Today

By Richard L. Lyons
Staff Reporter

The Senate last night passed a bill to "clarify" the Supreme Court decision in the Jencks case and prevent disclosure of secret Government files.

Passage came on a nearly unanimous vote after two Justice Department amendments to make it tougher were beaten by a solid Democratic side and half a dozen Republicans.

The House is expected to act today on a bill more in line with Justice Department thinking. If that passes, the bill would be forced into conference to settle differences.

The Court held in the Jencks case last June that reports made by a Government witness to the Government on matters he later testifies about must be given to the defense to help try to impeach his testimony.

Variously Interpreted

Lower trial courts interpreted the decision in various ways. Some ordered the Government to turn over files containing more than related to the testimony. The Justice Department complained that this would force disclosure of unverified and classified information and FBI investigating techniques. It asked for legislative guidelines.

The Senate bill was a compromise worked out by Sen. Joseph C. O'Mahoney (D-Wyo.). It provides, as the Justice Department requested, that the trial judge should screen reports to cut out parts not related to the testimony.

But O'Mahoney changed the original Administration bill in a way that removed liberal objection to tinkering with the decision at all and at the same time raised objections in the Justice Department.

Sen. Everett M. Dirksen (R-Ill.), who sponsored the Administration amendments, said the result was a "weak substitute" and that the Justice Department might be better off under the Jencks decision.

Objection Explained

Justice objected to a phase requiring that the defense be given certain "records" and asked that it be changed to "recordings." Acting Attorney General William P. Rogers wrote that this might be construed to mean "reports and files generally" and could "authorize the very rummaging" through files that the bill is intended to prevent.

O'Mahoney pointed out that the "records" were specifically limited to those of "statements made by the witness to an agent of the Government" on the subject of his testimony. He contended there was no ground for Rogers' fear. The amendment was beaten, 43 to 37.

Rogers' other proposed change was to clear up a legal question and forbid "discovery" in Federal criminal cases. This is a process by which the defense could get advance pre-trial information from the Government—such as the reports involved in this bill—to help prepare its case.

There is some question whether Federal rules of criminal procedure permit this. One ruling by the United States Court of Appeals here indicates the rules do permit discovery.

Dred Scott Decision Drove U.S. To Point Of No Return

Advertiser Montgomery, Ala. U.S.A.
Sun. 3-3-57

By BOB PRICE

NEW YORK, March 2 (AP) — The nine justices came into court slowly, the younger men in the rear retarding their steps to conform with the shaky tread of their aged chief.

They settled into their seats with a dry whispering of black robes. The crier intoned his formal words; then Chief Justice Roger B. Taney unfolded his thin, lank form and began to read the Dred Scott decision.

He read for 90 minutes, while his high, thin voice faded to inaudibility. While he read, the United States slid past the point of no return, toward Civil War. In the framing of the decision he pronounced, a president-elect had meddled. There had been unorthodox proceedings in the court. The judgment dealt the court's prestige a blow from which it would not recover for a decade.

At dead center of the malestrom of events was an illiterate, infirm Negro slave. The decision which was to settle everything settled nothing. . .

NATION TORN APART

The slave was Dred Scott, born in Virginia about 1795; in his 60s on this March 6, 1857, when the deciding whether he was slave or free man tore a nation apart. He had been named Sam. Just Sam, nothing more. The where, how and why of Sam's transmutation into Dred Scott is misted in legend.

The primary issue in Dred Scott's case was simple: Had four years' residence in free territory made this slave a free man? At climax, it involved far more — the status of all Negroes under the Constitution, the power of Congress to bar slavery from United States territories, the constitutionality of the Missouri Compromise and, the dominant question of the time, should expansion of slavery be permitted. In the opinion of most historians, the Dred Scott decision was the event that made Civil War inevitable.

NEGRO SLAVE

How did this Negro slave, past his best working days and unwanted by the people who owned him, become, in the sense, the focal point of a nation's destiny?

The critical action was Scott's purchase in 1832 by Dr. John Emerson, a surgeon in the U.S. Army. Emerson's duties took him from slave country, Missouri, into the free lands of Illinois and the Wisconsin Territory. Scott, his body servant, lived with him in free territory for four years, was married in free territory and his first child was born there.

Dr. Emerson died in 1843, leaving his estate — including the Scott family — to his wife, in trust for a daughter. Mrs. Emerson didn't want the slaves and, unable to dispose of them under the terms of the trust, gave them into custody of friends and returned, to Massachusetts. Later, she married an abolitionist, Dr. Calvin G. Chaffee, and you can imagine the embarrassment the Scott family was to him.

NATIONAL ISSUE

The precise progress of the Scott case to a national issue is not clear. Scott must have had pretty strong backing from the time the suit for his freedom was filed in St. Louis in 1846. But there does not seem to have been any great urgency in its lethargic early course through the courts. The picture changed in the early 1850s.

The temper of the country was short and getting shorter. The Compromise of 1850 had not stilled antislavery agitation as expected. Stephen Douglas' Kansas-Nebraska bill, opening to slavery lands which had been closed to it by the Missouri Compromise of 1820, revived the question in all its terrifying aspects. Border violence flared. Somebody got the idea that Dred Scott might be the test case which would restore domestic tranquility. .

PRESSURES MOUNTED

By the time the case reached the Supreme Court, it was obvious that far more than the slave-or-free status of one Negro was involved. Public pressures mounted for a broad pronouncement that would decide, once and for all, the status of slavery in the territories. These pressures were felt within the court.

The 1856 campaign increased the tensions. The Democrats won with James Buchanan, Pennsylvania by birth and Southern by sympathies, and a popular sovereignty plank that proclaimed the right of a territory's people to seek admission to the union "with or without domestic slavery." Buchanan's victory over John C. Fremont of the new Republicans, and Millard Fillmore of the dying Whigs, was interpreted widely as an expression of popular will against any restriction on slavery in the territories.

ARGUMENTS HEARD

The Supreme Court heard arguments early in 1856 and reargued in December. As imposing an array of legal talent as the country could muster added its collective voice to the demands for sweeping action.

There was no sign of storm in the court's early deliberations. A majority favored abiding by an 1851 decision whereby a slave returned from free to slave territory was declared subject to the laws of the state to which he returned, in this case, Missouri. Indeed, a decision to that effect was written. Then the funny business started.

The veil which traditionally conceals Supreme Court deliberations prevents absolute knowledge of what happened. But there were strong minds on the court who were unwilling to rest with the inconclusive reinforcement of the 1851 ruling. They pressed for broad action. Another influence was the intention of a Republican minority to speak out in defense of the party's contention that congress had power to control slavery in the territories. Whatever happened, the court decided to go into the question of congressional power.

STUMBLING BLOCK

Then another stumbling block arose. The court was composed of five justices from the South, four from the North. The five Southerners lined up solidly for declaring that Congress had no right to bar slavery from the territories. But the court had been under criticism for lack of balance in its membership for years. It would be embarrassing if a majority of five Southern justices should sweep the court into an irrevocable proslavery position.

The thing to do, obviously was to bring at least one Northern judge to the Southern side. The target was Grier of Pennsylvania, as Southern in sympathy as Buchanan. But Grier had been under heavy fire for pro-Southern rulings and he was reluctant to take the broad step. At this time, Buchanan comes into the picture.

Buchanan had written to Justice Catron of Tennessee early in February. The President - elect wanted to refer to the impending decision in his inaugural address and what could Catron suggest.

Catron said nothing had happened as yet, but he would keep Buchanan posted. Now Catron, acting for the Southern majority, approached Buchanan.

Would he "drop Grier a line, saying how necessary it is" that the court take a positive stand. The President - elect complied, and Grier came around.

The general tenor of the decision caused no great surprise. Advance word of the opinion had filtered through Washington. At least two newspapers had predicted the decision, even to fixing the vote at 7-2 and naming the dissenters. But a complete surprise could have occasioned no greater turmoil.

INFERIOR ORDER

In its primary finding, the court ruled that Scott was not a citizen, and could not become a citizen because Negroes were "beings of an inferior order." Actually, that disposed of the case. If the court had stopped there, the Dred Scott decision would be buried in dusty records. But it went on: slaves were property and property had to be protected whether it be a slave in Georgia or a mule in Vermont, under the "due process" clause of the Fifth Amendment. Congress had no power over property rights in territorial domains; therefore, it had no power over slavery. Since the Missouri Compromise interfered with property rights, the compromise was unconstitutional.

The decision was greeted with cries of outrage in the North. mass meetings of protest boiled up, state legislatures condemned the court in resolutions.

BALLOT BOX

There were charges, without foundation, that Buchanan and Taney had conspired. Some newspapers trumpeted for repudiation at the ballot box.

The North's antagonism speedily crystallized in retusal to accept the decision. It was a partisan ruling in favor of one section, one party, and one interest; therefore, it had no moral validity. So ran the reasoning. A few years later, the Civil War made the whole argument academic.

Dred Scott? He was set free soon after the Supreme Court's decision. He got a job as a hotel porter in St. Louis but lived to enjoy freedom only a short time. He died there in 1858. His grave, if all goes as planned, will be adorned with its first marker this year.

DRED SCOTT CASE IS 100 YEARS OLD

Times
New York

High Court Ruling Against Freeing Negro Has Echo in New Racial Strife

Sun 3-3-57

By LUTHER A. HUSTON

Special to The New York Times.

WASHINGTON, March 2 — The only Supreme Court ruling that was ever reversed by a war will be a century old Wednesday.

That was the Dred Scott decision handed down on March 6, 1857, to a nation hopelessly divided on the issue of slavery. It was a new torch to a smoldering conflagration that flamed into civil war four years later.

Dred Scott said that Congress had no right to forbid slavery in territory acquired by the United States after the adoption of the Constitution. The Civil War wiped out human bondage in any territtory under the American flag.

The centennial of the Dred Scott decision arrives at a time when national unities are again imperiled by a Supreme Court judgment.

States of the Deep South are angry over the high court's ruling that racial segregation in public schools is unconstitutional. The yare fighting the decision with every political and legislative resource at their command.

Not slavery, but issues of state's rights and racial rights, are involved in the school segregation decision. They also were a factor in the Dred Scott case.

No one expects a war to reverse the high court's decision of May 17, 1954, in the school cases. Some still hope for reversal by constitutional processes but more expect it to endure through future centuries.

The contrast between the national mores of 1857 and those of 1957 illustrates, perhaps more graphically than anything else, the long strides Negroes have made in a hundre dyears toward equality with the race that once kept them in thralldom.

Dred Scott was a slave and the descendant of slaves. His wife, Harriet, and his daughters, Eliza and Lizzie, were slaves. How he came to have a first name, Dred, that has remained distinctive for generations, is not disclosed in available annals of the times.

Dred Scott was owned by Dr. John Emerson, who lived in Missouri. In 1834 he was taken to Rock Island, Ill., by his master and lived there, in a free state, until 1836. Then he was again taken to Fort Snelling, Minn., in territory that was a part of the Louisiana purchase. By act of Congress, that was "free territory."

Married a Slave

While at Fort Snelling he married Harriet, who was the slave of an Army major. Their daughter, Eliza, was born on a Mississippi River boat, the Gypsey, north of the Missouri ilne. Lizzie was born in Missouri.

In 1882 Dred Scott was taken back to Missouri. He sued for his freedom, claiming that residence in free territory had struck off his shackles. He claimed the right to sue in Federal courts as a citizen of Mis-

CIVIL WAR MAKER

Dred Scott (right), the elderly Negro slave whose suit for freedom 100 years ago pushed America past the point of no return toward Civil War. Scott is shown with his wife in this picture, owned by their great-grandson, John A. Madison of St. Louis.—**AP Newsfeatures Photo**

souri.

While the suit was pending in 1852, Dred Scott and his family were sold to John F. A. Sanford, a New Yorker. The suit that came to the Supreme Court was entitled Dred Scott vs. Sanford. After the high court has decided it, Mr. Sanford gave Dred Scott his freedom, despite the fact that the high court's ruling condemned him to continued bondage.

Chief Justic Roger Brooke Taney, whose opinion was accepted as the ruling of the court although the eight other justices also wrote opinions, was a Marylander of "kindness and sympathy," who had also emancipated his slaves, according to one biographer.

But in deciding the Dred Scott case, Justice Taney reduced Negroes to the lowest level of human rights in the history of their race.

"The unhappy black race were separated from the white by indelible marks, and laws long before established, and were never thought of or spoken of except as property, and when the claims of the owner or the profit of the trader were supposed to need protection," Justice Taney stated in his opinion.

He added:

"They had for more than a century been regarded as beings of an inferior order, and altogether unfit to associate with the white race either in political or social relations; and so far inferior that they had no rights which the white man was bound to respect; and that the Negro might justly and lawfully be reduced to slavery for his benefit. * * * He was bought and sold, and treated as an ordinary article of merchandise and traffic whenever a profit could be made by it."

Warren Gives Views

Ninety-seven years later Chief Justice Earl Warren was to say, in the school cases, that to separate Negroes "from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may effect their hearts and minds in a way unlikely ever to be undone."

Justice Warren and the members of his court unanimously agreed that separate educational facilities were "inherently unequal." To maintain segregation based on race deprived Negroes of the equal protection of the law and was therefore unconstitutional, the court held.

It is related that a few weeks after the school decision was handed down Justice Warren was lunching in California with a man who had been his friend and supporter throughout his political career. The Chief Justice was telling his friend how gratified he was to have been asked to speak at the College of William and Mary at ceremonies commemorating Chief Justice Taney, an alumnus of that school.

"His decision was better than yours," the friend is quoted as commenting.

Not all of Justice Taney's court agreed with his sentiments, however. Benjamin Robert Curtis of Massachusetts was one of two dissenters. John R. McLean of Ohio also dissented.

Justice Curtis, in his opinion, said that slavery was contrary to a natural right and was created by "municipal law."

BOOK REVIEW

Herald Tribune P. 17

June 2, 1957

New York

By JOHN K. HUTCHENS

THE Supreme Court decision of last Monday that upset a section of Michigan's law relating to the selling of "obscene" literature achieved only part of what opponents of book censorship still hope for. Nevertheless, it was a healthy step in the right direction.

Police officials in Detroit and some other places can still arbitrarily ban a book—but they will be less likely to do so in the climate newly established by the court's opinion, and they can *not* do so simply to protect children who they think might be injured by a book. The adult reader who is old enough to sit up at night reading the works of John O'Hara, MacKinlay Kantor, Havelock Ellis, John Dos Passos and John Howard Griffin is no longer to be discriminated against.

Regrettably, in the view of anti-censorship groups, the court did not choose to rule on the issue of the so-called "containment" statute—that is, the statute under which a book may be banned if it is judged to "contain" obscenity, as distinguished from the doctrine that judges a book as a whole. But it remains a considerable triumph that in Michigan, and eleven other states with similar laws now subject to challenge, adult reading will not be legally held to the juvenile level.

It was preposterous that it ever could have been, as two memorable earlier decisions made clear. Judge John M. Woolsey, in his 1933 opinion in the "Ulysses" case, established the doctrine that a book is to be judged in its entirety and in terms of the artist's intention. Judge Curtis G. Bok, in a 1949 decision clearing a group of books of an obscenity charge in Pennsylvania, answered a familiar argument of censorship adherents:

"It will be asked whether one would care to have one's young daughter read these books. . . . I should prefer that my own three daughters meet the facts of life and the literature of the world in my library than behind a neighbor's barn, for I can face the adversary there directly. . . . Our daughters must live in the world and decide what sort of women they are to be, and we should be willing to prefer their deliberate and informed choice of decency rather than an innocence that continues to spring from ignorance."

It need hardly be said that no sane person advocates the distribution of the demonstrably obscene. Indeed, Minnesota's so-called model obscenity statute is generally admired, by opponents of censorship as well as others, precisely because it effectively curbs obscenity—not by pre-publication censorship, Detroit style, but in open court and by due process.

In the test case commendably carried to the highest court by Pocket Books, Inc., following the conviction and fining of one of its employees for selling a copy of Mr. Griffin's "The Devil Rides Outside," the issue involved the freedom of publisher and distributor from unconstitutional restriction—and, by implication, the reader's right to read. They go together because, in the true sense, a book is not published until it finds a reader. Justice Frankfurter seemed to be addressing himself to this point, as well as to the freedom of the press, when he said: "The state insists that, by quarantining the general reading public against books not too rugged for grown men and women to shield juvenile innocence, it is exercising its power to promote the general welfare. Surely this is to burn the house to roast the pig."

Just how irresponsible censorship can be was evident in the recent banning by Detroit police of John O'Hara's prize-winning novel, "Ten North Frederick," in the paperbound reprint published by Bantam Books. In its original, more expensive edition it had been sold in Detroit bookstores for a year and was available in the Detroit Public Library. Last month a member of Detroit's police censor bureau read the reprint edition and recommended its banning from the newsstands. The police commissioner then asked regular bookstores to withdraw the original edition also, saying, "This is not a book I would want my sons to read."

In short, no court action in open hearing, no judgment by jurists or other qualified authorities —and, incidentally, no recognition of an adult reader's right to spend fifty cents rather than $3.95 for the same book.

That case, too, may eventually reach the Supreme Court, and it will be even more momentous than the one just handed down. For it will have to do with whether our handling of the censorship problem leans toward totalitarianism or democracy.

12d 1957

MSC MUST INITIATE NEXT LEGAL ACTION IN INTEGRATION CASE

Memphis, Tenn.

Supreme Court Agrees Gradual Desegregation Is Inadequate

Lues. 5-21-57

5-YEAR PLAN KILLED

Attorney For Five Negroes Seeking Admission Not Surprised By Decision — Only Court Order Needed

By ROY JENNINGS

State officials pondered their next legal move yesterday after the United States Supreme Court declined to consider their gradual integration plan for Memphis State College.

Advocate Gen. Nat Tipton said in Nashville further moves will be up to Memphis State and the State Board of Education.

The Supreme Court upheld action last January by the Sixth Circuit Court of Appeals, which found the timetable integration plan to be a "non-compliance with the declaration of the Supreme Court.

Five-Year Plan

The plan called for admission of qualified Negro students over a five-year period with graduate students scheduled to start February, 1956, and freshmen in 1959.

H. T. Lockard, attorney for five Negro students who brought the suit, said he was "not surprised" at the Supreme Court action. The state had asked the Supreme Court to review the appeals court's decision.

The Negro attorney said his clients only need a court order from Judge Marion S. Boyd to enter the college. He indicated he hasn't decided when to ask for that.

In handing down its recent decision overruling Judge Boyd, the appeals court returned the case to Federal Court here for further action by the judge.

The jurists said they were aware the Supreme Court held that school facilities and transportation could be considered in working out an orderly desegration but the court also declared this should be done with deliberate speed.

Board Faces Decisions

Education Commissioner Quill E. Cope, chairman of the state board, said he plans to discuss yesterday's Supreme Court action with the state attorney general to determine the extent of the ruling.

Among decisions to be made by the board is whether to leave the proposed stair-step plan in effect at other state colleges in view of the court's rejection of the Memphis State plan.

Questioned concerning a new law by the 1957 Legislature that allows the State Board of Education and the University of Tennessee board to prescribe entrance requirements for new students at colleges and universities, Dr. Cope said the plan has not been discussed by the board.

He said he helped sponsor the bill in the Legislature and that its intent was not to prevent Negroes from entering white colleges. Its purpose, he said, was a standby measure that might be put in effect if increasing enrollments require it.

Unless a special meeting is called, the state board will hold no more meetings until Aug. 7.

In the appeal to the Supreme Court, the state pointed out the district court here was familiar with local conditions and is in a position to judge the proper spirit to be met in integration.

MSC Already Crowded

The state claimed the physical facilities at Memphis State were already crowded and unrestricted admission at the present time would result, practically, in the destruction of the college as an institution of higher learning.

Overtaxation of the physical facilities, the appeal added, would end in the school being deprived of its accredited standing and membership in the Southern Association of Colleges.

J. M. Smith, Memphis State president, referred comment to Dr. Cope.

EDUCATION

Tennessee to admit Negroes to state operated colleges in its refusal to review a lower court's ruling on the issue.

P. 3

The decision killed a Tennessee plan for gradual integration of teachers college and normal schools.

The suit was brought by five Negro students after they were denied enrollment in Memphis State College. The five applying for admission to the college were residents of Memphis. They applied on the basis that they were entitled to admission under the Supreme Court's ruling in 1954 that separation of pupils by races in public schools is unconstitutional.

Colleges Told To Admit Negroes

Daily World
Atlanta, Ga.
5-21-57
Ind.

WASHINGTON, D. C. — (INS) — The United States Supreme Court in effect Monday told the state of

TENNESSEE TO ADMIT NEGROES TO STATE OPERATED COLLEGES

RULING WOULD AVOID SCHOOL RESHUFFLING

Commercial Appeal

Appeal Court Decision Is Against Compulsion

Wed. 1-2-57

MIXING IS STILL UPHELD

Memphis, Tenn.

From The Commercial Appeal
Washington Bureau

WASHINGTON, Jan. 1. — The United States Fourth Circuit Court of Appeals has ruled that desegregation does not mean compulsory integration.

The three-jude court Monday affirmed an opinion by Federal Judge Paul V. Bryan in a ruling on a combined case affecting desegregation in Charlotesville and Arlington County, Va.

The new ruling was a further lower court clarification of the meaning of the Supreme Court's May 17, 1954, decision that public school segregaiton is unconstitutional, and the subsequent order for desegregation "with all deliberate speed."

Admission Not Denied

The Fourth Circuit Court of Appeals, in an opinion by Chief Judge John J. Parker of Charlotte, N. C., found no fault with Judge Bryan's interpretation.

"It must be remembered," Judge Bryan wrote, "that the decisions of the Supreme Court . . . do not compel the mixing of the different races in the public schools. No general reshuffling of the pupils in any school system has been commanded.

"The order of the court is simply that no child shall be denied admission to a school on the basis of race or color. Indeed, just so a child is not through any form of compulsion or pressure required to stay in a certain school, or denied transfer to another school, because of his race or color, the school heads may allow the pupil, whether white or Negro, to go to the same school as he would have attended in the absence of the ruling of the Supreme Court.

"Consequently, compliance with that ruling may well not necessitate such extensive changse in the school system as some anticipate."

Desegregation Ordered

Judge Bryan ordered desegregation of the Arlington County elementary schools at the beginning of the present etrm's second semester, Jan. 31.

The Fourth Circuit Court of Appeals affirmed this order as well as one by Judge John Paul directing immediate desegregation of the Charlottesville schools.

The Fourth Circuit Court of Appeals decision was in line with an earlier opinion by the same court in another school case. At that time it said:

"It (the Supreme Court) has not decided that the Federal courts are to take over or regulate the public schools of the states.

"It has not decided that the states must mix persons of different races in the schools or must require them to attend schools or must deprive them of the right of choosing the schools they attend.

"What it has decided, and all that it has decided, is that a state may not deny to any person on account of race the right to attend any school that it maintains. This, under the decision of the Supreme Court, the state may not do directly or indirectly; but if the schools which it maintains are open to children of all races, no violation of the Constitution is involved, even though the children of different races voluntarily attend different schools, as they atend different churches."

Consisten In Views

While in the Fourth Circuit Court of Appeals thus has been consisten in its views, other Federal courts have appeared to embrace different interpretations.

Federal Judge Robert L. Taylor of Johnson City, Tenn., has ordered the admission of 12 Negro pupils to Clinton High School in Tennessee, and, to enforce his order, has issued a blanket injunction restraining anyone from interferring with it.

Yet, in Dallas, Texas, Federal Judge William H. Atwell dismissed an integration suit and ruled that Dallas schools cannot be compelled "at the present time" to admites Negroes to white schools.

Judge Atwell said Dallas white schools are "hardly sufficent" to hold the present number of white pupils and "it would be unthinkable and unbearably wrong to require the white students to get out so that the colored students could come in."

High Court Weighs 5 Key Cases Involving Integration's Future

WASHINGTON — Five key cases involving the issue of integration are being considered this week by the U. S. Supreme Court which opened a new term on Monday.

• The justices must deal with cases involving sharply defined legal moves made by both pro- and anti-integrationists.

One case to be heard involves four Houston (Texas) Negroes who are accusing their union of discriminating against them in favor of white employes. The suit involves $75,000 in damages which the Negroes are seeking from their unions.

■

SEGREGATIONIST John Kasper has an appeal before the court involving his one-year sentence for contempt which was imposed upon him for his participation in the Clinton (Tenn.) disorders of August, 1956.

• A third item involves Virgil Hawkins of Florida, who has been trying, for the past eight years, to be admitted to the University of Florida Law School.

The NAACP finds itself directly involved in litigation facing the nine justices. The NAACP is facing a $100,000 contempt fine levied by Circuit Judge Walter B. Jones in Montgomery, Ala. The NAACP had been fined after it refused to submit its membership rolls to state inspection.

PERHAPS the key case on the docket involves the "massive resistance" policy of the state of Virginia which has put forth an appeal in support of its pupil placement act.

All of the cases involved have the elements of precedent-setting decisions which may or may not push the fight for integration ahead for another 20 years.

Eastland, Johnston, McClellan and Ervin have their knives unsheathed and whetted for the appointees to the Commission as soon as their nominations are sent to the Senate.

The Administration reasoned that Mr. Wilkins, having been confirmed as Assistant Secretary of Labor, can win confirmation as a member of the Commission.

On placement law—

Supreme Court school ruling has put Virginia on spot

BY JAY G. HAYDEN
North American Newspaper Alliance

WASHINGTON, Oct. 23—The U. S. Supreme Court on Monday almost certainly moved Virginia into the "hot seat" as the next crucial testing ground between federal and state authority as concerns racial integration in public schools.

And this decision comes only two weeks before election of a new governor of Virginia for a four-year term beginning next January.

Obviously the winner in this voting, unless he bows down to federal authority, will sooner or later be up against the same gun that Gov. Faubus of Arkansas met by ordering out the state's National Guard to resist admission of Negroes to Little Rock's Central High School.

THIS ISSUE as to Virginia is the more pronounced because the Democratic nominee for governor, J. Lindsay Almond, was the state attorney general who conducted the court case his state now seems to have lost irrevocably.

Last February U. S. District Judge Walter E. Hoffman ordered Norfolk and Newport News schools desegregated by opening of the next term in September.

Previously other federal judges had ordered integration of schools at Arlington and Charlottesville, Va., but Hoffman's decision went further in that he declared unconstitutional a 1956 state law setting up a so-called Student Assignment Plan.

The latter statute reposed all authority for admission to schools in a state board, specifically directed to cut off state financial support from any school which admits Negroes in defiance of another state law which forbids racial mixing. Tuition grants would be provided for private schooling of children of either race whose parents object to integrated classrooms.

Judge Hoffman's decision was sustained by the U. S. Court of Appeals, but Attorney General Almond appealed for a stay of this verdict pending examination of the State Placement Act by the Virginia Supreme Court.

The U. S. Supreme Court specifically rejected that request for delay.

THE NEXT step clearly is for Judge Hoffman to set a new date on which the Norfolk and Newport News schools shall be opened to Negro applicants. The logical supposition is that this will be at opening of the next semester in February, but it could be earlier.

In any event the issue clearly has been thrust into the Virginia gubernatorial campaign at a most vital moment. Within an hour after the Supreme Court finding, State Sen. Theodore Roosevelt Dalton, the Republican nominee, urged an immediate special session of the Legislature to deal with the problem. Dalton asked his opponent, Mr. Almond, to join with him in requesting the present governor, Thomas B. Stanley, to issue the special session call.

As yet neither Almond nor Stanley has replied to Dalton's proposal. Nor has there been any word concerning it from Virginia's two United States senators, Harry F. Byrd and A. Willis Robertson, both of whom have recently sworn everlasting resistance to federal authority as concerns school integration.

WHEN THE gubernatorial campaign began it looked like a toss-up. Four years ago Dalton came within 5 per cent of heading off Gov. Stanley, and since then President Eisenhower had carried Virginia by a majority even larger than he polled in 1952.

But then came the sending of troops to Little Rock, since which even the most ardent backers of Dalton concede that his prospect was badly damaged. In contrast, the Almond managers were jubilant. Said one of the latter:

"If it hadn't been for Little Rock we might have been in trouble. Now we're going to swamp Dalton. Those paratrooper bayonets have switched a whole host of votes."

Even with the present Supreme Court decision, Almond probably will win, but he and his backers may have a hard job revamping their argument to fit the prospect that Virginia, probably in February and certainly not later than next September, will be in the same boat as Arkansas.

New Ruling Is Setback For Dixie

Many Other States Have Similar Laws

WASHINGTON (UP) — The Supreme Court Monday struck another blow at Southern attempts to block or delay school desegregation.

It refused to hear a Virginia appeal against federal court orders to integrate the Norfolk and Newport News schools.

This leaves in effect a ruling by the Fourth U.S. Circuit Court of Appeals which knocked down the barriers to school integration raised by Virginia's 1956 pupil placement law.

Other Southern states have adopted similar laws to nullify the Supreme Court's 1954 racial desegregation edict. They were watching Monday's action for an indication of how their laws may fare in court.

Neither the Supreme Court nor the Appeals Court ruled directly on the constitutionality of the Virginia law. But both courts left standing an opinion by Federal District Judge Walter E. Hoffman of Norfolk the law is unconstitutional.

The action left Hoffman free to order the school boards to admit Negro applicants to Norfolk and Newport News schools. A separate appeal is being carried through the courts against a similar desegregation ruling affecting Arlington, Va., schools.

A lawyer for the National Association for the Advancement of Colored People said he interpreted the high court's action, coupled with lower court rulings, as throwing out the Virginia law.

On this basis, he said, the NAACP probably will ask the District Court in Alexandria to order immediate integration of Arlington schools.

The Virginia law removes authority over placement of students from local school boards and seeks to make the boards immune from integration suits. It vests pupil assignment in the hands of a state board.

If a white school admits Negroes, the governor may close it, deny it state funds and provide for "private" education of its white students.

The Supreme Court also agreed to hear arguments on a California law organizations must file a loyalty oath to qualify for property tax exemptions.

It let stand a decision permitting New York State investigators to disclose a recorded conversation between convicted extortionist Joseph (Socks) Lanza and an attorney, Sylvester Cosentino.

Attorneys General Want Court Curbed

Consolidation Atlanta, Ga.
P. 2. mon. 11-28-57

U. S. and States Weakened, House Unit Will Be Told

12d

By LUTHER A. HUSTON

(Copyright 1957 by The New York Times Co.

WASHINGTON, Oct. 27—The National Association of Attorneys General will ask Congress tomorrow for legislation to offset the "damaging effects" of recent supreme court decisions upon federal and state powers, particularly in the fields of subversive activities.

Stewart G. Honeck, attorney general of Wisconsin, will present the association's views to a special subcommittee of the House Judiciary Committee, appointed to study the decisions of the Supreme Court.

COMMITTEE CHAIRMAN

Honeck is chairman of a committee authorized by the association at its convention last June to appear before Congress in support of its recommendations.

Supreme Court decisions, Honeck will say, have had adverse effects in the following fields:

1. The powers of investigation of Congressional committees.
2. The powers and procedures of the Department of Justice in conducting prosecutions before the federal courts.
3. The adequacy of existing federal legislation, and even the powers of Congress itself to adopt such legislation, for the punishment and prevention of subversive activities.
4. The punitive and investigatory powers of the separate sovereign states against subversive activities, and against subversive organizations.
5. The power of the state and federal agencies to rid their payrolls of subversives.
6. The power of state supreme courts to determine qualifications of persons who shall be admitted to practice law in state courts.
7. The power in both state and federal courts to follow procedures consonant with fair play in the prosecution and conviction of criminals without having the convictions upset on technicalities.

Corrective legislation is desirable in those fields to strengthen the hands of federal and state agencies and maintain "a reasonable balance of power" between federal and state governments, Honeck will tell the subcommittee.

RESPECT FOR EACH BRANCH

In the opinion of many lawyers and public officials, the statement Honeck will present will say, a number of Supreme Court decisions "had unfortunate results" affecting the fundamental doctrine of separation of powers. The operation of our system, according to the statement, depends "upon a decent respect of each branch by the others."

Congress, according to Honeck, should not attempt to apply to controversies the laws which it enacts and the courts should not, where no law exists, "seek by judicial fiat to declare a rule of conduct."

The association does not believe that it is 'desirable to tamper in any way with the existing jurisdiction of the Supreme Court" but since "the power to decide includes the power to err," legislation to correct errors is desirable.

One point that Honeck will emphasize is that where "a large majority of attorneys general, and a similar majority of the qualified appellate practitioners of the American bar conclude that the decisions are wrong," they should be entitled to a rehearing at which reversals of the rulings could be asked.

COMMUNIST CONNECTIONS

The concern of the attorneys general arose principally from high court decisions at the last term which upset convictions of Communist leaders under a federal law making it a crime to advocate overthrow of the government by unlawful means, held that witnesses before Congressional committees could not be compelled to disclose the names of persons with whom they had associated in Communist movements, and that past membership in the Communist party was not sufficient evidence of bad character to justify a state in refusing a license to practice law.

At its convention in Sun Valley, Idaho, the attorney general organization, composed of the chief prosecutors of all the states, adopted a resolution, by a vote of 31 to 10, authorizing the appointment of a committee to formulate and present to Congress proposals to "reactivate federal and state internal security controls."

John M. Dalton of Missouri, president of the group, named Honeck chairman and Louis C. Wyman of New Hampshire, Richard Erwin of Florida, Graydon Smith of Idaho and George Fingold of Massachusetts as members of the committee.

LAWS TO REVERSE HIGH COURT ASKED

Times P. 28 c

States' Attorneys General See 'Damaging Effects' in Recent Decisions

New York, N.Y.

By LUTHER A. HUSTON

Special to The New York Times.

WASHINGTON, Oct. 27—The National Association of Attorneys General will ask Congress tomorrow for legislation to offset what it considers to be "damaging effects" of recent Supreme Court decisions concerning Federal and state powers, particularly in subversive activities.

Stewart G. Honeck, the Attorney General of Wisconsin, will present the association's views to a special subcommittee of the House Judiciary Committee, appointed to study the decisions of the Supreme Court.

Mon, 10-28-57

Mr. Honeck is chairman of a committee authorized by the association at its convention last June to prepare recommendations and to appear before Congress in support of them.

P. 28 c

The Supreme Court decisions, Mr. Honeck will say, have placed limitations on:

¶The powers of investigation of Congressional committees.

¶The powers and procedures of the Department of Justice in conducting prosecutions before the Federal courts.

¶The adequacy of existing Federal legislation, and even the powers of Congress itself to adopt such legislation, for the punishment and prevention of subversive activities.

¶The punitive and investigatory powers of the separate sovereign states in the field of subversive activities and subversive organizations.

¶The power of the state and Federal agencies to rid their payrolls of subversives.

¶The power of state supreme courts to determine qualifications of persons who shall be admitted to practice law in state courts.

¶The power in both state and Federal courts to convict without having convictions upset on technicalities.

Corrective legislation is desirable in those fields to strengthen the hands of Federal and state agencies and to maintain "a reasonable balance of power" between Federal and state governments, Mr. Honeck will tell the subcommittee.

Sees 'Unfortunate Results'

In the opinion of many lawyers and public officials, Mr. Honeck will say, a number of Supreme Court decisions "had unfortunate results" affecting the fundamental doctrine of separation of powers. The operation of our system, according to the statement, depends "upon a decent respect of each branch by the others."

According to Mr. Honeck, the courts should not, where no law exists, "seek by judicial fiat to declare a rule of conduct."

The statement will say the association does not believe that it is "desirable to tamper in any way with the existing jurisdiction of the Supreme Court," but since "the power to decide includes the power to err," legislation to correct errors is desirable.

Mr. Honeck will suggest that where "a large majority of Attorneys General, and a similar majority of the qualified appellate practitioners of the American bar conclude that the decisions are wrong," they should be entitled to a rehearing, at which reversals of the rulings could be asked.

Subversion Main Concern

The attorneys general were principally concerned over high court decision that:

¶Upset connections of some Communist leaders under provision of the Smith Act prohibiting conspiracy to teach and advocate the overthrow of the United States Government by force or violence.

¶Set limits on the power of Congressional investigations to compel witnesses to testify concerning Communist associations.

¶Held an individual's past membership on the Communist party to be insufficient in itself to justify a state's refusal to license him in the practice of law.

At its convention in Sun Valley, Idaho, the organization, composed of the chief prosecutors of all the states, adopted a resolution, by a vote of 31 to 10, authorizing the appointment of a committee to formulate and present to Congress proposals to "reactivate Federal and state internal security controls."

John M. Dalton of Missouri, president of the group, named Mr. Honeck chairman and Louis C. Wyman of New Hampshire, Richard Erwin of Florida, Graydon Smith of Idaho and George Fingold of Massachusetts as members of the committee.

"The Nine Strong Men"
Journal + Guide p.19
Ld. 7-13-57 Norfolk, Va.

Each In His Own Way, These High Court Justices Have Made History

(Editor's Note:—This is the second of three articles on the "Nine Strong Men" of the U. S. Supreme Court whose recent far-reaching decisions on individual liberties have placed the high tribunal dramatically in the forefront of the nation's news.)

By JAMES LEE

WASHINGTON — (INS) — As President of the United States, Harry S. Truman sought to project, under his "fair deal" label, the philosophy of government so controversially exemplified in Franklin D. Roosevelt's New Deal.

But Harry Truman believed, as he has said, that the Supreme Court of the United States should be above and beyond politics, that its nine justices should be chosen by standards of personal integrity and intellectual honesty, and not for reasons of political expediency.

* * *

THUS WHEN the time came in 1945 — five months after he became President—for him to make his first appointment to the high bench, Truman chose not a member of his own party, but a Republican, Harold Hitz Burton of Ohio.

Truman's final appointment to the court, however, did appear to have political overtones. He named the man who had served him for four years as Attorney General, Tom C. Clark of Texas, a Democrat in deed as well as in name.

* * *

WHEN DWIGHT D. Eisenhower entered the White House in 1953 as the first Republican President in 20 years, he was soon confronted with the necessity of naming a chief justice of the United States.

He looked westward for a man of strength, a man able by experience and inclination to balance the scales of justice, a man whose constitutional beliefs and theories apparently matched Dwight Eisenhower's own—which the President has described as "dynamic conservatism."

JUSTICE BURTON

* * *

THAT MAN was Earl Warren, Governor of California, Republican Vice Presidential nominee in 1948, a nationally respected leader of the GOP's "progressive" wing.

Each in his own way, the Truman appointees and the Chief Justice have made court history.

Burton, who was a close friend of Truman in the Senate despite their political differences, has demonstrated unostentatious efficiency and scholarship in his career on the court.

* * *

HIS WORK has been accomplished largely behind the scenes, in chambers. He has written few spectacular opinions. Instead, he has acted among his colleagues as a consultant, an expert in checks and balances, a restraining influence.

CHIEF JUSTICE WARREN

Burton is one of the most spiritually inclined members of the court. He is a leader of the Unitarian Church, a man given to prayer and meditation.

* * *

NOW 69, BURTON was born in Jamaica Plains, Mass., but moved to Ohio as a youth, and, like Truman, served overseas as an Army captain in World War I. He entered politics as a member of the Ohio Legislature, served five years as mayor of Cleveland, and was elected to the U. S. Senate in 1941.

His earnestness, quiet devotion to duty, and willingness to weigh both sides of an issue won him the admiration and respect Truman demonstrated by naming him to the Supreme Court in September, 1945.

* * *

MR. JUSTICE Clark is something of a paradox. When Truman appointed him to the Supreme Court bench in 1949, there were those who said of Clark that he was a machine politician, a party stalwart who would follow the leaders without quibble or objection.

JUSTICE CLARK

Events have seemed to prove that point of view all wrong. The rush of memorable decisions in recent weeks has cast Tom Clark in the role of "great dissenter."

* * *

FOR EXAMPLE — in his blistering dissent to the court's ruling that in criminal cases, including those of alleged subversives, the government must bare FBI secrets to defendants or dismiss charges, Clark vehemently assailed the majority decree.

He called it so dangerous that unless it is nullified by Congress the FBI "might as well close up shop."

* * *

AND IN HIS dissent to the reversal of the contempt of Congress conviction of John T. Watkins, labor leader who refused to tell the House Un-American Activities Committee the names of persons he knew as Communists, Clark was equally caustic.

In the lone dissenting opinion, he accused the majority of "mischievous curbing of the informing function of Congress."

* * *

AT 57, TALL, drawling, bow-tied, homespun Tom Clark, veteran of the New Deal and the Fair Deal, appears determined to carry the banner of conservatism, regardless of the path his colleagues follow.

Chief Justice Warren, it is sometimes said, is molding the court in his own image. He is a powerfully persuasive man.

When he took his seat as the nation's foremost judicial officer on Oct. 5, 1953, he lost no time in making it clear that he would choose the course of liberalism. He allied himself at once with those dedicated liberals, Justices Hugo L. Black and William O. Douglas.

* * *

UNDER WARREN the tribunal moved rapidly toward the historic and unanimous decision handed down in 1954, outlawing racial segregation in public schools and ordering the states to proceed toward that end with—a phrase which is descriptive of the Chief Justice himself — "all deliberate speed."

Now 66, a broad-shouldered man of impressive bearing, father of six children, a record California vote - getter when he was in politics, Warren seems certain to be remembered as one of the strongest chief justices in American history.

* * *

HIS DETERMINATION to protect the rights of individuals was reflected when he spoke for the court majority in the Watkins case. He said:

"We have no doubt that there is, no Congressional power to expose for the sake of exposure. The public is, of course, entitled to be informed concerning the working of government. That cannot be inflated into a general power to expose where the predominant result can only be an invasion of the private rights of individuals."

(Next week: The Supreme Court's three newest "strong men" and their probable alliance in the great division between liberals and conservatives.)

Clamor over Supreme Court rulings reminds of 1824 case

By LOUIS LAUTIER
For the NNPA News Service

WASHINGTON

The Supreme Court is under attack. There is nothing new in that. Men who would subvert the court have been attacking it ever since Chief Justice John Marshall wrote the opinion in Gibbons v. Ogden in 1824.

That case involved interstate commerce—the question of who should run a ferry service between Elizabeth, N.J., and Manhattan.

The New York courts upheld a 30-year monopoly granted by the New York Legislature to Robert Fulton, inventor of the steamboat, and Robert Livingstone, a Democratic politician who was one of Thomas Jefferson's Secretaries of State.

* * *

CHIEF JUSTICE MARSHALL, in a famous decision, held the New York monopoly invalid as in conflict with a Federal statute licensing vessels in the coastal trade.

Much of the fury about recent decisions goes back to this decision by Marshall. Present-day critics, particularly decisions outlawing racial segregation in public schools and the Steve Nelson case, would subordinate the Federal Constitution.

In the Steve Nelson case, the Pennsylvania Supreme Court held invalid the sedition act of that state saying it was superseded by the Smith Act, making it a Federal offense to advocate the forcible overthrow of the Federal Government.

The U.S. Supreme Court, in a 6-to-3 decision, affirmed the Pennsylvania decision, striking down state laws penalizing advocacy of violent overthrow of the Federal Government.

Rep. Howard W. Smith of Va. and Sen. John L. McCellan, of Ark., both Democrats, introduced companion bills, providing:

* * *

1.) **A FEDERAL** act shall not be held to "occupy the field" to the exclusion of state laws on the same subject unless the Federal act expressly so provides.

2.) A federal law shall not invalidate a state law "unless there is a direct and positive conflict" between them "so that the two cannot be reconciled."

The Federal Constitution makes it clear that state action violating the Constitution is invalid. It is for the Supreme Court to decide in cases brought before it whether state action does conflict with the Federal Constitution.

In one of the more recent cases, that of John T. Watkins, a Midwestern labor leader, the court decided, in effect, that witnesses can be compelled to testify before Congressional committees only when:

* * *

(1) THE COMMITTEE is acting within the scope of the resolution creating or directing the inquiry) (2) The testimony is needed for preparing legislation and (3) It is made clear to the wirness that the questions are pertinent to the investigation.

All Justice Earl Warren did was to remind Congress that its powers to investigate are not unlimited and that the rights of the individual against illegal encroachment must be protected.

The Justice Department accepted the principle of the Jencks case that a defendant may inspect a statement of a government witness for the purpose of impeaching his credibility.

* * *

BUT ATTORNEY GENERAL HERBERT BROWNELL asked for legislation to clarify the pro-procedure to be followed in applying this principle.

Congress is in the process of passing legislation to give the trial judge discretion to determine what material from FBI and other Federal law enshould be available to defendants.

Finally, there is the case of Andrew R. Mallory, 22-year-old youth of limited intelligence, who was convicted of rape and sentenced to death in the U.S. District Court for the District of Columbia.

In a 9-to-0 decision the court set aside Mallory's conviction because the police arrested him on mere suspicion and held him for seven and a half hours—until he confessed. Then they reached a U.S. Commissioner to have him arraigned.

* * *

DURING THE period of his detention at police headquarters was questioned and, when questioning failed to produce a confession, he was asked to submit to a lie-detctor test.

Justice Felex Frankfuter, speaking for the court, said:

"He (Mallory) was not told of his rights to counsel or to a preliminary examination before a magistrate, nor was he warned that he might keep silent and that any statement made by him may be used against him.

"After four hours of further detention at headquarters during which arraignment could easily have been made. . .petitioner (Mallory) was examined by the lie-detector operator for another hour and a half before his story began to waver.

"Not until he had confessed, when any judicial caution had lost its purpose, did the police arraign him.

* * *

"WE CANNOT sanction this extended delay, resulting in confession, without subordinating the general rule of prompt arraignment to the discretion of arresting officers in finding exceptional circumstances for its disregard.

"Where police resort to interrogation of an arrested person and secure a confession, they may well claim, and quite sincerely, that they were merely trying to check on the information given by him.

"Against such a claim and the evil potentialities of the practice for which it is urged stands Rule 5 (A) as a barrier."

Rule 5 (A) of the Federal Rules of Criminal Procedure provides that "an officer making an arrest under a warrant issued upon a complaint or any person making an arrest without a warrant shall take the arrested person without unnecessary delay before the nearest available commissioner or before any other nearby officer empowered to commit persons charged with offenses against the laws of the United States."

* * *

THE REASON for this rule is well stated in McNabb v. United States, 318 U.S. 332, 343-344:

"Legislation such as this, requiring that the police must with reasonable promptness show legal cause for detaining arrested persons, constitutes an important safeguard.

"Not only is it a safeguard in assuring protection for the innocent, but also in securing conviction of the guilty by methods that commend themselves to a progressive and self-confident society."

These decisons which have drawn heavy criticism have put the court on the side of human rights, the Bill of Rights, the supremacy of the Federal Constitution and Federal laws over state constitutions and state laws.

With that basic position, no right-thinking American can differ.

Supreme Court Orders 3 Contempt Case Reviews

Associated Press

The Supreme Court set aside three contempt of Congress convictions yesterday and told the United States Court of Appeals here to reconsider the cases in the light of last week's Watkins' decision.

The convictions set aside were those of Abram Flaxer, former president of the now defunct United Public Workers of America; Lloyd Barenblatt, former teacher at the University of Michigan and Vassar College; and Harry Sacher, New York defense attoney in Communist cases.

In the Watkins decision, announced last Monday, the Supreme Court said congressional committees must be more specific in spelling out the jurisdiction and purposes of its committees.

Didn't Know Rights

The High Court said, too, that John T. Watkins, a union leader of Rock Island, Ill., was not given a fair opportunity to know whether he was within his rights in refusing to answer questions he said were not pertinent to the inquiry under way.

Watkins was questioned before the House Committee on Un-American Activities, as was Barenblatt. The contempt actions against Flaxer and Sacher grew out of the appearance before the Senate Internal Security Subcommittee.

Flaxer had been sentenced to two months' imprisonment and fined $1000. His organization was a union of Federal, State and municipal employes.

The conviction stemmed from Flaxer's refusal to produce a list of members of the union before Sen. Arthur V. Watkins (R-Utah) sitting as a Senate Internal Security Subcommittee on Oct. 5, 1951. The Subcommittee was investigating Communist infiltration of Federal agencies at the time.

Refused to Answer

Barenblatt refused to tell the House Committee whether he was a Communist Party member at the time he testified on June 28, 1954, or ever had been. He also refused to say whether he had ever been a member of the Haldane Club of the Communist Party while in Michigan.

United States District Court here sentenced Barenblatt to six months in jail and a $250 fine.

The Committee was investigating Communist infiltration in the field of education, when Barenblatt was called to testify. The teacher contended he was protected by the constitutional guarantee of free speech and insisted the Committee's purpose in questioning him was not legislative but solely to "expose" his beliefs and associations.

Silent on Red Ties

Sacher testified before the Senate Internal Security Subcommmittee on April 19, 1955, but refused to say if he was then or ever had been a member of the Communist Party.

The Subcommittee was trying to determine whether Communist lawyers masterminded the turn-about of witness Harvey Matusow. The Subcommittee said it had information that Matusow's recantation was a facet of a concerted effort intended to discredit "anti-Communist" witnesses and professed former Communists.

Sacher received a contempt sentence of six months and $1000 fine. He is free on bond pending outcome of his appeal. The attorney went to prison in 1952 under another six-month contempt sentence. That one grew out of his actions as defense counsel in the trial of 11 top Communists.

U. S. Court Ruling on Integrating Dallas Schools

Special to The New York Times.

NEW ORLEANS, Dec. 27—Following is the text of the Federal Appeals Court decision on integrating the Dallas public schools:

In the United States Court of Appeals for the Fifth Circuit No. 16934. Dr. Edwin L. Rippy, as president of the Board of Trustees of the Dallas Independent School District, et al,

Appellants

Hilda Ruth Borders, a minor, by her father and next friend, Louie Borders Jr., et al,

Appellees

Appeal from the United States District Court for the Northern District of Texas and motion for leave to file petition for mandamus.

Dec. 27, 1957

Before Rives, Jones and Brown, Circuit Judges.

By RIVES

Upon the last appeal, this court revered the judgment of the District Court dismissing the complaint and directed the entry of a judgment restraining and enjoining the defendants from requiring segregation of the races in any school under their supervision from and after time as might be necessary to make arrangements for admission of children to such schools on a racially nondiscriminatory basis with all deliberate speed as required by the decision in Brown v. Board of Education of Topeka, 349 U.S. 294, and further directed the District Court to retain jurisdiction of the cause for such further hearings and proceedings and the entry of such orders and judgments as might be necessary or appropriate to require compliance with such judgment. (1) Borders v. Rippy, Fifth Circuit, 1957, 247 F. 2d 268.

After he had received the opinion of this court, but before our mandate had issues, the District Judge called counsel before him and made a statement "as to his determination," in part as follows:

"This court is now called upon to issue an order in accordance with the Circuit Court's decisions and directions. That order not only unsettles the tranquility of the Dallas public schools which has heretofore existed in a proud form for many years under which both the colored and the white pupils have had equal school facilities and splendid teachers, but it also takes from the independent school district a large necessary amount of state funds if and when desegregation is ordered.

"It is difficult, gentlemen, for me to approve this order, but this is a land of the law and it is my duty to do what I am ordered to do by the higher court, and I therefore ask you gentlemen of counsel to prepare an order in accordance with the ruling of the United States Circuit Court of Appeals for this circuit, as outlined in its opinion upon the original case and upon the motion for rehearing, and I should like to have you gentlemen of counsel to prepare the order to be approved by each of you as to form, ordering intergration to be permitted at the coming midwinter term of the schools and not before that time. Let your order contain the practical portion of the school boards division of districts and institution of schools."

No Further Hearing

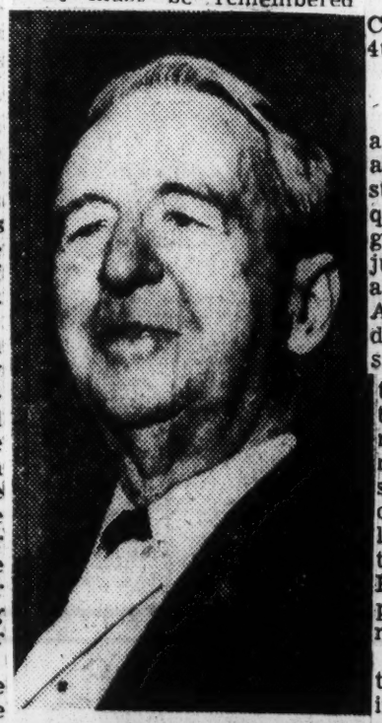
Without any further hearing, without any evidence other than that appearing in the record which led to our reversal, and without inviting suggestions or arguments from counsel on anything save as scriveners in the drafting of an order to effectuate his prior determinations, the District Judge thus picked the mid-winter school term of 1957-58 as the time to start system-wide desegregation.

After our mandate had been received, but still without any further hearing, and professedly upon the decision and order of this court and the record theretofore made in the cause, the District Judge restrained and enjoined the defendants "from requiring or permitting segregation of the races in any school under their supervision, beginning and not before the mid-winter school term of 1957-58."

Upon the same record, the District Judge had therefore expressed his opinion that: "I think that the testimony shows completely that the school authorities here in charge of this independent school district are certainly doing their very best to comply with the ruling of the Supreme Court of the United States." This court in turn had said that: "We do not impugn the good faith of the board, of the superintendent, or any of the school authorities." (247 F. 268, 272). (2)

We have emphasized the words "or permitting segregation of the races" in the District Court's order because that expression might indicate a serious misconception of the applicable law and of the mandate of this court. Our mandate (foot note 1, supra) had been carefully limited so as to direct the entry of a judgment restraining and enjoining the defendants "from requiring segregation of the races in any school under their supervision." Likewise in our opinion, we had pointed out that it is only racially discriminatory segregation in the public schools which is forbidden by the Constitution. (3) That point was emphasized in the Arlington, Virginia, case (4) in which Chief Judge Parker of the Fourth Circuit quoted with approval the apt language of District Judge Bryan:

"It must be remembered



Associated Press

REVERSED ON APPEAL: Federal Judge William H. Atwell, who ordered that integration in schools in Dallas should begin in the midwinter 1957-58 term.

that the decisions of the Supreme Court of the United States in Brown v. Board of Education, 1954 and 1955, 347 U. S. 483 (74 S. Ct. 686, 98 L. Ed. 873) and 349 U. S. 294 (75 S. Ct. 753, 99 L. Ed.) 1083) do not compel the mixing of the different races in the public schools. No general reshuffling of the pupils in any school system has been commanded. The order of the court is simply that no child shall be denied admission to a school on the basis of race or color. Indeed, just so a child is not through any form of compulsion or pressure required to stay in a certain school, or denied transfer to another school, because of his race or color, the school heads may allow the pupil, whether white or Negro, to go to the same school as he would have attended in the absence of the ruling of the Supreme Court. Consequently, compliance with that ruling may well not necessitate such extensive changes in the school system as some anticipate.'"

School Board of City of Charlottesville, Va., v. Allen, 4th Cir, 1956, 240 F.2d 59, 62.

No Date Was Fixed

In our opinion on the last appeal, we noted that the then appellants prayed for no more stringent order that one "requiring appellees to desegregate the schools under their jurisdiction 'with all deliberate speed'" (247 F. 2d 272). Accordingly, this court's mandate fixed no date for desegregation more specific than "from and after such time as may be necessary to make arrangements for admission of children to such schools on a racially nondiscriminatory basis with all deliberate speed as required by the decision in Brown v. Board of Education of Topeka, 349 U. S. 294." (foot-note 1, supra).

The authority to administer the public schools is vested in the appellants, the board and the superintendent, and, of course, they are the ones required to make the necessary arrangements referred to in the judgment to be entered by the District Court as directed by our mandate. If the school authorities fail promptly to meet their primary responsibility to the plaintiffs, appellees, and others similarly situated, then the duty will devolve upon the District Court to hold a hearing to decide whether they have done so and, if necessary, to proceed further so as actually and effectively to require compliance.

In the performance of that duty, the District Court must exercise its own judgment and discretion in accordance with the applicable principles of law set forth in Brown v. Board of Education of Topeka, supra. It seems to us that the District Court did not do this in entering the judgment appealed from, but apparently considered itself bound to enter that judgment by the mandate of this court. That was not in accord with the mandate nor with the order of responsibility (first the school authorities then the local district court, and lastly the Appellate courts) prescribed in Brown v. Board of Education of Topeka, supra:

"Full implementation of these constitutional principles may require solution of varied local school problems. School authorities have the primary responsibility for educating, assessing and solving these problems; courts will have to consider whether the action of school authorities constitutes good faith implementation of the governing constitutional principles. Because of their proximity to local conditions and the possible need for further hearings, the courts which originally heard these cases can best perform this judicial appraisal." (349 US at P. 299).

We thought, and still think, that this court's mandate made it clear that before a more specific date should be fixed and before any orders or judgments should be entered to require compliance with the judgment directed in that mandate, the school authorities should be accorded a reasonable further opportunity promptly to meet their primary responsibility in the premises, and then if the plaintiffs, or others similarly situated, should claim that the school authorities have failed in any respect to perform their duty, there should be a full and fair hearing in which evidence may be offered by any and all parties, and further for the court should retain jurisdiction to require compliance with its judgment.

The judgment of the District Court is therefore reversed and the cause remanded with directions to enter a judgment in accordance with the mandate of this court issued on Sept. 7, 1957, and in accordance with this opinion, and to retain jurisdiction for such further hearings and proceedings and the entry of such orders and judgments as may be necessary or appropriate to require compliance with such judgment. In view of the reversal on appeal, the petition for mandamus is not necessary and leave to file said petition is denied.

Reversed with directions. Leave to file petition for mandamus denied.

(1) In peritnent part the mandate of this court read:

"On consideration whereof, it is now here ordered and adjudged by this court that the judgment of the District Court is reversed and the cause is remanded with directions to the District Court to enter judgment restraining and enjoining the defendants, Board of Trustees of the Dallas Independent School District, Dallas County, Texas, and the president and members thereof, together with the other defendants in this case, their and each of their agents, servants, employes and successors in office and those in concert with them who shall receive notice of such judgment, from requiring segregation of the races in any school under their supervision, from and after such time as may be necessary to make arrangements for admission of children to such schools on a racially nondiscriminatory basis with all deliberate speed as required by the decision of the Supreme Court of the United States in Brown v. Board of Education of Topeka, 349 U.S. 294, and retining jurisdiction of the cause for such further hearings and proceedings and the entry of such orders and judgments as may be necessary or appropriate to require compliance with such judgments."

(2) The District Judge has sent to the clerk of this court a copy of his letter to appellants counsel, the body of which reads as follows:

"I thank you for the copy of the brief which you have filed with the Circuit Court of Appeals in re: Rippy et al v. Borders et al.

"It is somewhat surprising to me that you continue to contend that the court made a 'judicial guess' in fixing the midwinter term as the time for integration.

"I asked both you and counsel for the other side, when the mandate was received from the Circuit Court of Appeals, to prepare an order, and some little discussion followed, and then you being unable to agree upon an order I fixed the order and the time because the court ordered me to see that integration took place at 'deliberate speed.'

"I had heard testimony several times which told of the number of students, both white and colored, and knew the number of the plaintiffs who were called—twenty-seven, and I thought that five months was ample time and would be in accordance with the order of the Circuit Court."

While that letter reflects an attitude of the District Judge not shown in his two statements which have been quoted, it can hardly serve to change the record before this court. Further, by its reference to twenty-seven plaintiffs, it apparently ignores the fact that this is a class action in which the District Court has ordered en masse desegregation having no relation to the number of named plaintiffs.

(3) "The equal protection and due process clauses of the Fourteenth Amendment do not affirmatively command integration, but they do forbid any state action requiring segregation on account of their race or color of children in the public schools. Avery v. Wichita Falls Independent School District, 5 cir., 1957, 241 F. 2d 230, 233. Pupils may, of course be separated according to their degree of advancement of retardation, their ability to learn, on account of their health, or for any other legitimate reason, but each child is entitled to be treated as an individual without regard to his race or color." Borders v. Rippy, 247 F. 2d 268,271. (4) Thompson v. County School Board of Arlington County, E. D. Va., 1956, 144 F. Supp. 239, 240, affirmed 4th cir., 240 F. 2d 59, 62.

High Court, Congress Seen as Equals

Herald
Miami Fla.

(Copyright, 1957, American Institute of Public Opinion)

PRINCETON — In the court of public esteem, Congress and the U. S. Supreme Court come out with virtually an even verdict.

The Gallup Poll

Three out of every 10 adults, or 30 per cent, say they have greater respect for the Supreme Court today, while 29 per cent say they have a higher respect for the Congress.

But one-fifth, or 20 per cent, of the voters of the country say their attitude toward the nation's highest tribunal has changed in recent years and 17 per cent have a different attitude today toward the national legislature.

The overwhelming majority of those who have changed their attitudes say they now hold an unfavorable opinion.

The sounding of popular sentiment took place on three questions, of which the following is the first:

"Which do you have greater respect for — Congress or the Supreme Court?"

The replies nationwide of adults:

Supreme Court	**30%**
Congress	**29**
Equal respect for both	**23**
No opinion	**18**

The greatest deviation from the national pattern is found in the South, where 39 per cent say they have greater respect for Congress, compared to 21 per cent who say they have greater respect for the Supreme Court.

Partisan loyalties also influence a person's attitudes, the survey finds. More Democrats say their respect for the Congress (now Democratic-controlled) is greater than it is for the Court, while more Republicans hold a greater respect for the court, than for Congress.

The vote by party affiliation:

	Rep.	Dem.	Ind.
Supreme Court	32	27	36
Congress	24	34	26
Equal respect	27	22	19
No opinion	17	17	19

Interviewers next asked:

"Has your attitude toward the Supreme Court changed in recent years?"

Attitude Toward Supreme Court Changed?	
Yes	**20%**
No	**78**
Can't say	**2**

Three-fourths, or 15 per cent, of those who said their attitude toward the Court has changed of late say they now hold an unfavorable opinion, while three per cent say favorable and two per cent give indifferent or vague replies.

Proportionately, more than twice as many people in the South (35 per cent) as in any other section say their attitude toward the court has changed, and among this group unfavorable ones by a margin of 26 per cent to 4 per cent, with 5 per cent giving indifferent or vague replies.

Adults were next asked:

"Has your attitude toward Congress changed in recent years?"

Attitude Toward Congress Changed?	
Yes	**17%**
No	**81**
Can't say	**2**

Of the 17 per cent who said their attitude toward Congress had changed, nearly two-thirds or 11 per cent, say they now hold an unfavorable opinion, while three per cent say favorable, and three per cent give indifferent or vague replies.

The largest proportion of those who said they have changed their opinion of Congress in recent years was found in the West (26 per cent).

Sweeping Decisions For Freedom

Journal + Guide Sat 7-6-57 Norfolk, Va.

"The Nine Strong Men" Guard American Liberty

P. 11

(Editor's Note: The U. S. Supreme Court has handed down a barrage of controversial decisions curbing congressional and executive department actions in the field of individual freedoms. To help Americans understand the tribunal and appraise its history-making decisions, the Journal and Guide presents starting this week searching closeups of the court's "Nine Strong Men"—their personalities, talents and beliefs—by one of Washington's most distinguished correspondents. This is the first of three articles.)

By JAMES LEE

WASHINGTON — (INS)—At a tense moment in history, when he felt the Supreme Court was impeding the surge of his depression-era New Deal with constitutional roadblocks, President Franklin D. Roosevelt contemptuously called the justices, "nine old men."

Today, a sweeping series of decisions dealing powerful setbacks to Congress and the Executive Branch of the government on issues involving individual liberty has projected the court more spectacularly into the headlines than at any time since its mighty battles with F. D. R.

* * *

BUT NO ONE has said anything about "nine old men."

Instead, critics and supporters alike concede that the Supreme Court today is made up of nine strong men.

The court under Chief Justice Earl Warren, an Eisenhower appointee, has repeatedly demonstrated its stern determination to assert its guardianship of the constitutional rights of free American citizens.

* * *

YET ITS STRENGTH is seldom shown in unanimity. The dramatic vigor of dissenting opinions often reveals the rugged independence of the justices. No man on the high bench is a rubber stamp. None fears to attack with blistering language the opinions of his colleagues.

The oldest justices in point of service are the three surviving holdovers from Franklin Roosevelt's day — a one-time member of the Ku Klux Klan, (a Jewish immigrant, and a mountain climber whose spirit of adventure has beckoned him to the world's far peaks.

THE EX-KU Kluxer, transformed into a political libertarian of high degree, is Hugo Lafayette Black of Alabama.

The justice who came to the U. S. as an immigrant child is Vienna-born Felix Frankfurter, at 75 the tribunal's dean in age.

The mountain climber is restless, literate, light-hearted William Orville Douglas, who spends his summers scaling far-off peaks and writing rhythmic prose.

* * *

MR. JUSTICE Black, a southerner born and bred, is a native of Birmingham. His age is 71. He doesn't look it.

Black joined the Ku Klux Klan early in his political career when he was seeking election as a Birmingham police court judge. At that time membership in the anti-Catholic, anti-Jewish, anti-Negro secret society was almost mandatory for a man running for office in the Deep South.

WHEN HE WAS elected to the U. S. Senate in 1927 his political foes taunted him with the Klanhood he had long since cast aside. Black met the issue squarely. He offered no denials but let his record speak for itself.

In the Senate, that record showed a consistent departure from the creeds and standards of the southern conservatives with whom Mr. Roosevelt was engaged in a feud that continued until the day of F. D. R.'s death.

* * *

THUS WHEN the President found an opportunity in 1937 to replace one of the "nine old men" with a justice whose views were more in line with his own, he chose Sen. Black. In the intervening 20 years, Black has strayed only infrequently from the political philosophy of Franklin Roosevelt.

Mr. Justice Frankfurter's beginnings were humbler than those of any of his brethern of the Supreme bench. He was born in a Vienna slum. His immigrant parents brought him to America in the smelly steerage-class quarters of a slow ship when he was six years old.

BUT IN erudition, it is said, he excels all his fellow justices. Largely self-taught in early boyhood, he worked his way through the College of the City of New York and went on to win academic fame as a professor at Harvard University Law School.

In World War I, Frankfurter was a major and judge advocate in the Army and later an assistant to the Secretary of War, secretary and counsel to President Woodrow Wilson's Mediation Commission, and chairman of the War Labor Policies Board.

* * *

HIS RECORD then and in the subsequent years made him a "natural" for F. D. R.'s New Deal "brain trust." Frankfurter was brought from Harvard to Washington to serve as adviser, policy-maker, and functionary extraordinary under Mr. Roosevelt. He was rewarded with an appointment to the Supreme Court in 1939.

Though he has been rumored many times to be ready for retirement, Frankfurter shows no sign of quitting. He continues to be the court's most persistent interrogator of lawyers. Once labeled a "liberal's liberal," his opinions in recent years have reflected a new tendency toward conservatism.

MR. JUSTICE Douglas, 58, has exhibited no such tendency. His opinions and his actions on the bench seem to show the same probing, pioneering, high-climbing urges he displays in his summertime pursuits.

Mountaineer Douglas, a native of Minnesota but a product, as far as residence in his formative years is concerned, of the State of Washington, came to the District of Columbia in 1936 as a bright young New Dealer on the Securities and Exchange Commission.

HE QUICKLY gained the approving eye of the man in the White House and after serving for two years as chairman of the SEC was named to the Supreme Court in 1939.

Sandy-haired, wiry, friendly Bill Douglas has done little to dispel the belief that he was, and will continue to be a dedicated watchdog of all the freedoms guaranteed or even implied by the constitution.

(Next week: President Harry S. Truman's two appointees to the Supreme Court and President Eisenhower's key judicial appointment—the Chief Justice of the United States.)

JUSTICE FRANKFURTER

JUSTICE BLACK

JUSTICE DOUGLAS

Texas Defied US Courts, Finally Lost

Times-Picayune
Pennsylvania Also Waged
30-Year Fight
Sun. 9-8-57

By DOUGLAS B. CORNELL

WASHINGTON, Sept. 7 (AP)—Texas set neighboring Arkansas an example for armed resistance to federal authority in the turbulent "hot oil" days a quarter century ago. So did Pennsylvania, a thousand miles and a century and a half away.

Texas and Pennsylvania couldn't win. They gave way before the power of the U.S. Supreme Court. Their defeats may be additional precedents for Gov. Orval E. Faubus and his use of the Arkansas National Guard to try to prevent racial integration in a Little Rock high school.

There have been other instances in which states used their military forces to defy the federal government or some of its agencies. But the Pennsylvania one brought the first big showdown on the respective power of federal and state courts. In the Texas case the Supreme Court gave one of its most positive, clear-cut opinions on use of troops to balk a federal court.

Martial Law Invoked

The Texas case had its origin in 1931, in the depression days when "hot oil" was being produced in disregard of national and state efforts to hold down output.

A U.S. court enjoined application of an administrative order restricting production.

Gov. Ross S. Sterling proclaimed martial law in several east Texas counties which he said were in "a state of insurrection, tumult, riot, and a breach of the peace" because some oil men were engaged in reckless, wasteful production in violation of the state conservation law.

The governor directed Brig. Gen. Jacob F. Wolters of the Texas National Guard to take command of the situation and to take steps to uphold the law in accordance with orders from the governor relayed through State Adjutant Gen. W. W. Sterling.

Wells Closed Down

All the wells in the area were shut down by military force. Some of the oil operators contended their rights were violated because the constitution guarantees they can't be deprived of their property without due process of the law.

A U.S. District Court upheld their position, said there was no insurrection or emergency to justify use of troops, and issued an injunction against interference with the rights of the operators.

The governor took the case to the Supreme Court, arguing his proclamation of martial law was "a supreme and unchallengeable edict" which was not subject to review of federal courts. In a sharply worded unanimous opinion, by Chief Justice Charles Evans Hughes, the Supreme Court declared on Dec. 12, 1932:

"If this extreme position could be well taken, it is manifest that the flat of a state governor, and not the Constitution of the United States, would be the supreme law of the land; that the restrictions of the federal Constitution upon the exercise of state power would be but impotent phrases, the futility of which the state may at any time disclose by the simple process of transferring powers of legislation to the governor to be exercised by him, beyond control, upon his assertion of necessity.

Says Idea Untenable

"Under our system of government, such a conclusion is obviously untenable. There is no such avenue of escape from the paramount authority of the federal Constitution."

The renowned Pennsylvania "Olmstead case" was far more complex. It dragged through the courts for 30 years. The key decision, by Chief Justice John Marshall, was handed down in 1809 by the U.S. Supreme Court. It directed enforcement of a decision by a U.S. District Court in Philadelphia which the state and its Legislature had defied. One famed sentence said:

"If the Legislatures of the several states may, at will, annul the judgments of the courts of the United States, and destroy the rights acquired under those judgments, the Constitution itself becomes a solemn mockery; and the nation is deprived of the means of enforcing its laws by the instrumentality of its own tribunals."

2000 Men Deputized

Gov. Simon Snyder called out the militia to resist the decree. A U.S. marshall countered by summoning a posse of 2,000 men. Journals of the day spoke of a likelihood of bloodshed, which never materialized, and vigorously debated the issue of federal versus state powers.

Behind it was a story rooted in the Revolutionary War—a story of drama, heroics and persistence. In one role or another, major or minor, it involved names of prominent men, some of them signers of the Declaration of Independence.

Francis Scott Key, more renowned as author of the Star Spangled Banner than as a lawyer, was on the legal team for the central figure, Gideon Olmstead. Benedict Arnold, at the time military commander at Philadelphia, helped Olmstead finance his legal fight.

Captured by British

Olmstead was a Connecticut fisherman. He and three companions were captured and pressed into the crew of the British sloop "Active," bound for New York with military supplies.

MORE MORE MORE MORE

Though outnumbered 14 to 4, Olmstead and his Connecticut helpers, according to old Supreme Court records, "rose upon the master and crew of the sloop, confined them to the cabin, took command of the vessel and steered for Egg Harbour, in the state of New-Jersey." That was on Sept. 6, 1778.

In sight of the harbor two days later, "they were pursued, and forcibly taken possession of by Capt. Thomas Houston, commander of the armed brig Convention belonging to the state of Pennsylvania, and, on the 15th of September, brought into the port of Philadelphia. . ."

Houston claimed the ship and cargo as a prize. The master of the privateer Le Gard which had been cruising with the Convention also entered a claim, as did Olmstead and his associates. The latter eventually sold out their interests to Olmstead.

A state Admiralty Court, presided over by George Ross, one of the signers of the Declaration of Independence, awarded Olmstead only a fourth of the proceeds from sale of the sloop and cargo. It said the crews of the two ships should get a fourth each and the state a fourth.

A newly created federal Court of Appeals reversed the decision and said Olmstead should have the whole prize. The state court refused to accept that verdict, and, in effect, impounded the prize money in the hands of David Rittenhouse, a famous astronomer at night and state treasurer by day.

In 1803, Olmstead won another verdict from Judge Richard Peters in U. S. District Court for Pennsylvania. Talk arose of impeaching the judge. Peters declined to enforce his order, saying he didn't want to embroil the federal and state governments.

The state Legislature again stepped in and defiantly passed a law directing the governor to take steps to get the prize money for the state, to use any means he considered necessary for the protection of "the just rights of the state," and to protect the executrices of the estate of Treasurer Rittenhouse, who had died.

Court Action Ordered

Dormant for some 14 years before this, the case was left dangling another five. Finally Olmstead asked the Supreme Court to order Judge Peters to take steps to carry out his 1803 decision. The court complied, with Chief Justice Marshall's opinion of Feb. 20, 1809.

Peters issued a writ for service on the daughters of Rittenhouse, Mrs. Elizabeth Sergeant and Mrs Esther Waters, who were the executrices of his estate. They lived in what was to become known as "Rittenhouse Fort," in Philadelphia.

Gov. Simon Snyder quickly messaged the state Legislature that he intended to call out the militia to prevent enforcement of the Supreme Court decree and asking for legislation to back him up, although it "may produce some serious difficulties as it respects the relations between the state government and that of the United States."

State troops under Gen. Bright surrounded the Rittenhouse mansion and the U. S. marshal trying to serve papers on the daughters "was met with armed resistance."

Another account said the marshal "was resisted by pointed bayonets" and "in vain did the marshal read his commission and his warraht, and add a speech on the duty of obedience."

The marshal gave up but announced he would be back in three weeks with a posse of 2,000. But a day or two before the deadline, he managed to get into the back entrance of the house and take the two women into custody.

Madison Rejects Plea

Meanwhile, Gov. Snyder had appealed to President Madison to side with the state. Madison, in office only a few weeks, told the governor in blunt terms:

"The executive is not only unauthorized to prevent the execution of a decree sanctioned by the Supreme Court of the United States, but is expressly enjoined, by statute, to carry into effect any such decree, where opposition may be made to it."

With that, the state Legislature began a strategic withdrawal, put up funds that could be used to settle the case, the siege of Rittenhouse Fort ended, the call for a posse was canceled.

Olmstead, 82, by then, finally received his prize money, or at least the part Pennsylvania was trying to take.

The last chapter in the case was written in U. S. Circuit Court before Judge Bushrod Washington. Gen. Bright and some of his men were tried for resisting the laws of their country.

The jury held out for three days and nights, refusing to convict them. In the end it came in with a decision that the defendants had resisted the U. S. marshal but were acting under directions of the state. The jurors left the type of verdict to the judge. He said, "guilty," fined the general $200 and sentenced him to three months in jail, and gave the other defendants a month each and a $50 fine.

President Madison quickly canceled the sentence on grounds the militiamen had acted with a mistaken sense of duty.

Guard Used by States In 4 Previous Cases

Post + Times Herald p. 19-A
Washington, D.C.
Nov. 9 1958

By Frederick Bernays Wiener

Member of the D. C. Bar; author of "A Practical Manual of Martial Law"; formerly Assistant to the United States Attorney General.

Whatever one may think of the action of Gov. Faubus of Arkansas in calling out the National Guard of that state to prevent enforcement of the integration decree of the Federal Court there, it can at least be said that, unfortunately, he had ample precedent for what he did.

On at least four occasions in the last quarter century, the National Guard, which is trained and armed and equipped by the United States, has been employed to fight the United States.

The last of these incidents occurred in 1940. Gov. Phillips of Oklahoma, being dissatisfied with the sums the United States was proposing to pay for roads to be flooded by the federally financed Grand River Dam, called out the Oklahoma National Guard to halt construction, and thus prevented closing the dam at a critical juncture when spring floods were expected.

Injunction Obtained

On the basis of its property interest in the dam, legal title to which was in a state body, the United States obtained an injunction against such use of the Guard.

That injunction was set aside by the Supreme Court on a technical jurisdictional ground ,namely, that it should have been issued by one judge rather than three, but meanwhile the dam was completed, and it was a vital source of power in World War II for the war industry.

In 1938, Gov. Kraschel of Iowa mobilized the Iowa Guard to halt a hearing of the National Labor Relations Board at the Maytag plant. The hearing took place elsewhere.

In 1934, the Governor of Arizona called out the Guard of that state to stop a contractor who was building Parker Dam under contract with the Government.

The United States then brought suit against Arizona in the Supreme Court, and the troops were withdrawn; but the Court held that the dam had not been properly authorized under the Reclamation Law and dismissed the suit.

Texas Case

The earliest instance, and the only one where the Supreme Court decided the merits of the use of troops, arose in Texas in the early 1930s. There a United States court had enjoined the operation of an administrative order limiting oil production.

Gov. Sterling declared the oil area to be in a state of insurrection, and called out the Guard to do what the court had said could not be done by the Texas Railroad Commission.

An injunction against such use of military force was promptly issued; the Governor appealed, and argued that his own proclamation of martial law was conclusive and unreviewable. The Supreme Court in a ringing opinion by Chief Justice Hughes, unanimously rejected this argument in words that bear repetition today:

"If this extreme position could be deemed to be well taken, it is manifest that the fiat of a state Governor, and not the Constitution of the United States, would be the supreme law of the land; that the restrictions of the Federal Constitution upon the exercise of state power would be but impotent phrases, the futility of which the state may at any time disclose by the simple process of transferring powers of legislation to the Governor to be exercised by him, beyond control, upon his assertion of necessity. Under our system of government, such a conclusion is obviously untenable. There is no such avenue of escape from the paramount authority of the Federal Constitution."

Law Regarding Guard

The crux of the difficulty is that today, and ever since 1916, the law governing the National Guard specifically says that nothing therein "limits the right of a state . . to use its National Guard or its state defense forces within its borders in time of peace." U. S. Code, Title 32, Sec. 109 (b).

As long as Congress is content, under the importunities of all the pressures that radiate from the National Guard, to continue that provision in force — the present language dates only from 1956—then it is inevitable that the Guard will be less of a military force trained for the national defense, and more of a political police, the plaything of irresponsible state executives.

Supreme Court Lacks Respect For Federal Constitution

Daily News, Jackson, Miss. 5/8

By A. S. COODY

Many observed parts of the nation stitution Week," an event on the calendar that attracts little attention nowadays because of the disrespect our United States Supreme Court is showing for the organic law of the land.

For many years we have had a lot of bunk and buncombe about the constitution being the palladium of our liberties, the bulwark of our inherent rights. It never was that, and recent Ukases and edicts of the Supreme Court have made us sensible that the Constitution does not stand between the citizen and the power of a despotic government.

We should remember that our liberty was won after years of war, and can be preserved only by eternal vigilance and constant readiness to stand up and be counted, and if need be to fight. No people on the face of the earth are free, unless they have fought for liberty, and have remained in readiness to fight. The Negro is a possible exception, because he was elevated into slavery and had liberty forced upon him.

The Declaration of Independence was signed July 4, 1776. The war of independence began, or was already begun, and continued until the surrender of Cornwallis at Yorktown, Oct. 17, 1781. The Treaty of Peace was not signed until Sept. 3, 1783, nearly two years after the surrender of Cornwallis. The 13 colonies were governed by their respective governments, with Constitutions which served as the model for the U.S. Constitution.

DOCUMENT SIGNED IN 1781

The Articles of Confederation, used by the colonies, served to answer their needs but many felt that a more permanent alliance should be formed. The Constitutional Convention met in May, 1787, and the Constitution was completed and signed Sept. 17, 1787, more than eleven years after the Declaration of Independence. Rhode Island did not send Delegates to the Convention, but came into the Union in 1790. Washington was inaugurated as President April 30, 1789.

Thus it will be seen that the Colonies governed themselves and maintained the liberty of the citizens for 13 years, half of the time being spent in war; and they prospered. It was several years after Washington was inaugurated before laws of a general nature were enacted, and the operation of the government throughout the colonies was effective.

The colonists, or citizens of the several states, did not look with much favor on the Constitution, and much opposition arose. To this we are indebted to a discussion of the proposed Constitution by the writers. Thos. Jefferson and James Madison opposed ratification, as did the leaders in Massachusetts and New York. It would never have been ratified unless the leaders in the various states had agreed to the first ten amendments, known now as the Bill of Rights. These are denials of power to the central, or Federal government. Alexander Hamilton and John Masrhall defended the powers given the central government, and argued that they were necessary. Jefferson and Madison, argued for strict limitation on Federal power, and were interested in the liberty of the individual citizen.

For many decades we have been told of the opposing views of the two leaders, Hamilton and Jefferson, and the main idea was that Jefferson trusted the people, and Hamilton did not. The real difference was that Hamilton wanted a strong nation, modeled after France, under which flag he was born. Hamilton wanted the words "united states" to be one word, and the states mere provinces.

Jefferson, insisted upon a clear division of the powers of government into three divisions, legislative, executive and judicial; and upon the retention of the States of all their natural and inherent rights. He was for scattering the powers of government, and making provision for local self-government, and individual responsibility. There is a great gulf between the views of Jefferson and Madison and those of Hamilton and Marshall.

At first the instrument we have come to call the Constitution was termed the "Compact." It was an agency set up to do the will of the States in matters of foreign affairs and inter-state relations. It was definitely understood that the Central Government could do nothing unless the "Compact" clearly and explicitly authorized the act. As an example, when Jefferson bargained for the purchase of the Louisiana Territory, he admitted that he had no authority to buy the vast territory, but felt that he should, and as he stated, act as a guardian investing the money of his ward, "I did this for your good; I pretend to no right to bind you: you may disavow me, and I must get out of the scrape as I can: I thought it my duty to risk myself for you."

MODELLED AFTER BRITISH

Can any one imagine the present Chief Executive saying such a thing?

The writers of the Constitution had before them the unwritten English Constitution, and many of them were student's of Montesquieu's Spirit of Laws (Esprit de Lois) in which he set out the three divisions of government. And he then added: "Of the three powers mentioned, the judiciary is next to nothing."

Blackstone, the Great English writer on Law, says that, "parliament can do anything not naturally impossible; what it does, no authority on earth can undo. . .The power of parliament is absolute."

That was the idea held by most of those who wrote our Compact, or Agency Contract. Even Alexander Hamilton admitted it, and argued for acceptance of the Compact on the grounds that only the specific powers granted could be exercised by the central government. He said that the ten amendments proposed by Jefferson and Madison were not needed, because the central (federal) government could do nothing except the specific things granted to it by the States.

The present Chief Executive has come out for the New Republicanism, which one of his followers says means this: "If a job has to be done to meet the needs of the people, and no one else can do it, then it is a proper function of the federal government." Now, who is to decide on the needs of the people, and who shall say if there is no one else to do it? Obviously, the president will decide, and by this rule do what he desires to do, as the supreme court has done in the Black Monday Ukase. This is the first principle of totalitarianism, to disregard all rights of local authorities, and of course do it "for the people." All tyrants, in all ages, have claimed to be acting for "the good of all." Of the process of usurpation and encroachment, Washington, in his "Farewell Address, stated we might need to amend the form of the Compact, but said he: "Let there be no change by usurpation." And Washington said this: "The spirit of encroachment tends to consolidate the powers of all the departments in one, and thus create, whatever the form of government, a real despotism."

The present administration has carried encroachment and usurpation to the ultimate limits. No one doubts that the present court would approve any act of despotism exercised by the president. The Black Monday decision, has torn the country asunder as never before since the Civil War. Instead of "ensuring domestic tranquility," as the Compact says, it has everywhere created turmoil. Women have been clubbed and jailed, and some handcuffed. How far are we from Hungary?

THE JOHN CASPER CASE

Let us look at the case of John Casper. I know nothing about him, other than derogatory Big Press stories, where he is referred to as "Northern segregationist," "KKKer", rabble - rouser," etc. There is no evidence that he has struck anyone, or thrown a stone at any one. He is arrested in Nashville, fined in city court, indicted by the county court, and then delivered to the Federal agents. He was denied all the rights set out in the 6th amendment, such as informed of the charges against him; confronted by the witnesses against him; compulsory process for summoning defense witnesses, denied assistance of counsel and trial by jury. Let us grant that Kasper is evil, but what happened to him can happen to any citizen.

The U. S. Supreme Court recently freed a Communist who had been convicted of teaching the over throw of the government, even by violence, just so long as it is on principle only, and does not advocate a specific act at some time and place. Others were granted new trials because they had not been given access to the FBI files used against them. In all, the court departed from past procedure in 17 different decisions in one day.

But no one must speak against the enforcement of a Federal injunction requiring the mixing of white and black children in the same school. Perhaps, those who oppose the court, should first join the Communist Party!

There has been a lot of talk about the Ukase of the court on Black Monday being "the law of the land". It is not the law of the land. Let us see. Article VI, Section 2 of the Compact has this language: "This Constitution and the laws of the United States which shall be made in pursuance thereof ..... shall be the supreme law of the land".

Congress has enacted no law whatsoever concerning schools; it has never said the races shall be separated or shall be mixed.

High Court Of U.S. Indicted By South

News + Courier Sun. 6-2-57 P. 6-A

Charleston, S.C.

BY W. D. WORKMAN JR.
Editorial Correspondent

COLUMBIA, June 1 — Bit by bit, the states of the South are making out a bill of particulars against the present thinking of the United States Supreme Court in fields which go far beyond questions of race relations.

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Three states already have documented their grievances against the court with detailed statements and other Southern states have similar charges under legislative consideration. Florida was the first state to make out a general case against the pattern of recent Supreme Court decisions and it did so by way of a concurrent resolution adopted last August and signed by Gov. LeRoy Collins.

Then came the Georgia legislature with a resolution which likewise enumerated the grievances against the court and went to the extreme of proposing impeachment of those Supreme Court justices who had taken part in decisions which, in the eyes of Georgia legislators, subverted the Constitution of the United States. (A similar resolution has been introduced in the South Carolina General Assembly and is under study by the Judiciary Committee of the House of Representatives.)

Now comes the legislature of Alabama, with a second "nullification" resolution which this time is not restricted to the school desegregation issue, but which specifies other instances of alleged impropriety by the Supreme Court.

It may be significant that most of the Supreme Court decisions objected to be these Southern states arose outside the South (except for the school segregation cases). Perhaps the strategy of this procedure incorporates the hope that non-Southern states will see their own sovereignty at stake and rally to the cause of states' rights on grounds other than racial.

In any event, a serious indictment is gradually shaping up against the high court, as evidenced by these representatives excerpts from the Florida resolution:

"(1) By decisions rendered May 17, 1954, (in the school segregation cases) the Supreme Court of the United States denied to the sovereign states of the American union the power to regulate public education by the use of practices first declared constitutional by the state of Massachusetts, adopted by the Congress, approved by the executive, affirmed and reaffirmed by the Supreme Court of the United States and practiced by states for more than a century."

"(2) In a decision rendered May 21, 1956, in Railway Employes Dept., AFL, et al. vs. Robert L. Hanson, the Supreme Court of the United States held that a union shop agreement negotiated between certain railroads and certain organizations of employes of such railroads, which had been authorized by an act of the Congress, superseded the right-to-work provisions of the Constitution of the state of Nebraska and the state statutes enacted pursuant thereto."

"(3) By a decision rendered January 16, 1956, in Danton George Rea vs. U.S.A., the Supreme Court of the United States held that it was within the power of the federal courts to enjoin an officer of the executive department of the federal government from testifying in the courts of the state of New Mexico in a criminal prosecution of one charged with a violation of a statute of that state prohibiting the possession of marihuana."

"(4) By a decision rendered April 2, 1956, in Commonwealth of Pennsylvania vs. Steve Nelson, the Supreme Court of the United States has declared that, so long as the present federal law providing punishment for sedition exists, the sovereign state of Pennsylvania and those 41 of her sister states who have enacted laws against sedition, are without power to enforce their statutes enacted for the purpose of preserving the lives and safety of their citizens from those who would by force and violence overthrow the government of the United States, the states themselves, or any of their political su' 'ivisions."

"(5) In a decision rendered April 23, 1956, in Judson Griffin, et al vs. People of the State of Illinois, the Supreme Court of the United States held that the due process and equal protection clauses of the Constitution of the United States rendered illegal the imprisonment of one charged with armed robbery and duly convicted in the trial court of Illinois, unless the State of Illinois provided the defendant, free of charge, with a transcript of the proceedings to be used in an appeal of his conviction."

"(6) By a decision rendered April 9, 1956, in Harry Slochower vs. Board of Higher Education of the City of New York, the Supreme Court of the United States held that the City of New York had violated the Constitution of the United States by the summary discharge of a public employe who had refused to answer questions relative to his communistic activities and claimed the benefit of the Fifth amendment to the Constitution in so doing."

In the light of those decisions, said the legislature of Florida, it is evident that the Supreme Court "has entered upon a policy of substituting the personal and individual ideas of the members of the Court as to what the Constitution of the United States should be.

Nine-Man Supreme Court Is Widening Guardianship Over Rights And Freedoms

Commercial Appeal Sun. 6-23-57 P. 1

Memphis Tenn.

Narrowing Limits On How Far Government Can Go In Judging, Segregating And Interfering With Liberties Of Individuals

By JAMES MARLOW
Associated Press Staff Writer

12d

WASHINGTON, June 22.—The nine-man Supreme Court is steadily widening its guardianship over the rights and freedom of individuals, including communists.

It is doing so by narrowing the limits on how far Government —city, state or Federal—can go in trying people, questioning them, judging them, segregating them, or interfering with them and their liberties.

It has been acting with increasing firmness since 1954, and particularly this year. Its decisions don't please everyone.

Southerners have attacked it for banning segregation in public schools and elsewhere. Others in Congress have blasted it for its rulings on the side of communists, defendants in courts and witnesses before committees.

Refuses to Back Up

The court refuses to stop or back up. Segregation is an example of how far it is willing to go in asserting its authority.

Congress, the Government's only lawmaking body, because of Southern opposition, has done nothing in the 20th Century to wipe out state laws against the segregation of Negroes. The court stepped into this gap.

It outlawed segregation in the schools on the ground that segregation means unequal treatment and discrimination against citizens. Thus the court, in effect, has become, in the field of civil rights, the American lawmaking body.

In the past five years the court has:

1. Forced the Eisenhower Administration to be far more careful in branding Government workers security risks.

Makes It Tougher

2. Ordered the Justice Department to deal more openly with people it brings to trial, even to revealing pertinent information from its secret files.

3. Made it tougher for the Justice Department, which has been trying communists in wholesale lots, to try them in the future.

4. Stiff-armed Congress itself by ruling that its committees—if they want to punish a witness for not answering questions—must ask questions that are publicly useful and not merely for the sake of headlines or to injure a witness.

5. Not only consistently backed a witness' right to avoid self-incrimination by taking the Fifth Amendment, but has insisted the amendment is for the protection of the innocent as well as a shield for those with something to hide.

6. Knocked out the right of the armed forces to court martial ex-servicemen for crimes committed while in service.

7. Ruled out court-martial—at least for capital offenses—for civilians accompanying the armed forces overseas in peacetime.

8. Forbidden states to try communists for sedition on the ground that sedition is a national security problem and the Federal law on the subject has superseded state law.

Commercial Appeal P. 3

A natural question occurs: Why has the court become so increasingly vigorous in its protection of citizens against the Government?

The answer may be: Human beings.

The court has undergone some changes in recent years. Since Earl Warren, former governor of California, became chief justice in the fall of 1953, the court has seemed more determined to speak out.

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For half a century the court had pussyfooted around the question: Are state laws, which segregate Negroes from whites, an unconstitutional denial of equal treatment to Negroes?

In 1954, under Chief Justice Warren's leadership the court flatly banned segregation in public schools. Since then it has extended the ban to other areas of American life.

Other Eight Justices

When Chief Justice Warren took over, the other eight justices were: Black, Douglas, Frankfurter, Jackson, Reed, Minton, Clark and Burton. With few exceptions the verdicts those justices would give were not firmly predictable.

Justices Black and Douglas invariably voted on what is called the liberal side. Justice Frankfurter joined them most of the time, but not always. Justice Jackson was an independent spirit. Justices Reed and Minton were highly conservative. Justices Clark and Burton varied.

From the moment he went on the bench, Chief Justice Warren lined up almost—but not quite—100 per cent with Justices Black and Douglas on the liberal side. With Justice Frankfurter joining them most of the time on civil liberties cases, they still were only four.

To have a full majority on their side required persuading at least one of the other five to join them from case to case. Justice Jackson died and was replaced by Justice Harlan.

Justices Reed and Minton retired and were replaced by Justices Brennan and Whittaker. From the time he began joining in decisions, early this year, Justice Brennan has lined up solidly with Chief Justice Warren, Black, Douglas and Frankfurter on civil liberties cases.

Five Take Liberal View

That means now that there are five justices who can be expected in matters of civil liberties to take the so-called liberal view. It's a majority. Justice Harlan, who started out conservatively, has become increasingly liberal on civil liberties.

Justice Clark, with a pretty consistent record of defending witnesses' right to take the Fifth Amendment, racked up an almost astonishing record of dis-

agreement with the Warren-Black - Douglas - Frankfurter-Brennan bloc in 1957.

Justice Burton still switches around. Justice Whittaker, the newest on the bench, had little to do with this year's decisions.

But with the present "liberal" majority on the bench more, and not fewer, far-reaching opinions on the liberal side of civil liberties can be expected.

Following are some of the major activities of the court on civil liberties in the past three years, starting with what it did to the Eisenhower Administration:

June 11, 1956—The court tore apart President Eisenhower's Federal employe security program, under which a Government worker, no matter what kind of a job he held, could be fired as a security risk for various reasons.

Revision Is Required

The court ruled that henceforth only a man employed in a sensitive job could be fired as a security risk. This required a revision of Mr. Eisenhower's whole program.

Armed forces.

Nov. 7, 1955—The court said the armed forces—once a serviceman had been discharged back into civilian life — could never try him for a crime committed in the service.

This ruling was in favor of Robert W. Toth of Pittsburgh, an honorably discharged veteran, whom the Air Force wanted to court-martial in the killing of a Korean civilian.

June 10, 1957—The court threw out the conviction of two Army wives — Mrs. Dorothy Krueger Smith and Mrs. Clarice B. Covert—who had killed their soldier husbands overseas. Both had been court-martialed and given life sentences.

Never again, the court said. It ruled military courts have no right to try civilians in peacetime—at least for capital offenses like murder—since civilians under the Constitution are guaranteed trial by jury.

Now Up To Congress

It's now up to Congress to provide some way of giving jury trials to ex-servicemen who committed a crime in service or a civilian who, while with the armed forces overseas, committed murder.

Crackdown on the Justice Department, which prosecutes for Federal crimes:

March 25, 1957—The court said when the Government tries a man it can't—if the identity is relevant to the man's defense—conceal the identity of a Government informer against him.

This was in the case of a man tried on a narcotics charge. The person from whom he allegedly bought heroin was never identified beyond the usual legal name of "John Doe."

June 3, 1957—The court went far beyond the informer problem. It said:

If the Government uses a witness against a man it is trying; it must let the defendant see anything it has in its files, like written reports, which the witness may have previously given the Government about that defendant.

Defendants Have Right

The reason: Every defendant has a right to try to impeach the testimony of a witness against him. He might be better able to do that if he could compare what a witness says in testimony with what he wrote secretly to the Government.

Limit on state power on sedition:

April 26, 1956—.The court said sedition is a national security problem and the Federal Government has laws to take care of that. Therefore, states have no right to try communists on charges of sedition.

This opinion of the court upset the conviction of Steve Nelson, given 20 years by a Pennsylvania state court after a sedition trial.

Rights and protections for communists, ex-communists or those who help them:

May 14, 1957—.The court set aside the conviction of three people who, in a California cottage, had harbored a communist fugitive. The latter had gone into hiding after being found guilty of conspiring to overthrow the Government.

Convictions Thrown Out

The court threw out the conviction of the three people on grounds of illegal seizure: FBI agents who raided the cottage had no search warrant but nevertheless carted away every stick of furniture for examination.

May 20, 1957—.The court decided the Justice Department lacks authority to forbid communist activity by an alien who has been under a deportation order for three months but whom the Government has been unable to deport.

June 17, 1957—.The court knocked out the conviction of 14 communists found guilty of conspiring to overthrow the Government. The court's ruling was based on technicalities.

But it warned the Government that in future prosecutions of communists it must show they did more than just advocate forcible overthrow of the Government; they must be shown to have incited people to action.

The Fifth Amendment:

The court repeatedly has upheld the right of a man, questioned by a congressional committee investigating communism, to take the Fifth Amendment to avoid answering. That amendment says a man can't be forced to incriminate himself.

May Not Imply Guilt

But in one case the court stepped in to say—contrary to popular belief—that use of the Fifth Amendment doesn't necessarily imply guilt.

Harry Slochower, teacher in a New York City college, was fired by the city after taking the Fifth Amendment before a congressional committee. He had admitted past Communist Party membership but balked at talking about his actions.

The Supreme Court, acknowledging Slochower had no constitutional right to his city job, nevertheless said the city had violated his right to due process of law when it fired him for use of the Fifth Amendment. The court said:

"We must condemn the practice of imputing a sinister meaning to the exercise of a personal constitutional right under the Fifth Amendment."

The kind of questions that can be asked and answered:

Many witnesses before congressional committees spurn use of the Fifth Amendment to avoid answering questions. Instead, they invoke protection of the First Amendment which protects a man's right to his own beliefs, expressions and the friends he keeps.

Decisions Are Avoided

But the court has persistently avoided giving an outright decision on use of the First Amendment. Instead, when confronted with such cases, it has ruled on some side issue.

It did that this week in two cases: John T. Watkins, a labor organizer, and Paul M. Sweezy, a lecturer and author.

Watkins had been found guilty of contempt of Congress for refusing to answer questions of the House UnAmerican Activities Committee. Sweezy had been convicted by New Hampshire's Supreme Court for refusing to answer questions by the state's attorney general.

Both men cited the First Amendment as their reason for not answering. The Supreme Court ruled out the convictions of both men but without passing directly on their use of the amendment.

Two committee witnesses had identified Watkins as a Communist. He denied he ever had been but admitted he had worked with Communists until he broke with them. Then he was asked questions about a number of people he knew in those days.

Court Raises Question

He said he'd talk about himself and about people he believed were still members of the party but he declined to discuss people he felt were no longer members.

The court raised the question: Were the questions asked Watkins "pertinent" to the investigation the committee was making? The court said Watkins had a right to know before he answered but that the committee's explanation was vague.

So it cleared him, but not without a slap at the committee. the full House has authorized the committee to investigate un-American propaganda but it has gone off in many directions in its investigations over the years.

The committee may pay no attention to the court and go on asking questions as it has in the past. But unless it gets more precise in asking a witness questions and can show him how they are pertinent to its investigation, then:

It will have a tough time, in view of the court decision, in making any contempt action against a silent witness stick.

Conviction Thrown Out

Sweezy, asked by New Hampshire's attorney general about subversive activities, denied he was subversive or knew subversives. He refused to answer questions about lectures he had given or about his friends or the Progressive Party.

The Supreme Court threw out Sweezy's conviction on narrow grounds. The state Legislature had authorized its attorney general to conduct inquiries.

But the court said there was a "lack of any indication" the Legislature wanted the kind of information the attorney general tried to get from Sweezy.

Court Letter Is Answered

The Oct. 5 issue of The Post Herald carried a letter from James H. Countryman under the headline "Can The Supreme Court Make Laws?" wherein Mr. Countryman states:

"If we accept the utterly false doctrine that the Constitution is what the Supreme Court says it is, then we have substituted the court for the Constitution and made the court the supreme law of the land."

Perhaps the following comment from Volume VI, pages 321-323, of the 1954 edition of the Encyclopedia Britannica is relevant to the question posed in your headline and in the letter:

"The U. S. Supreme Court is the final authority on the application of the Federal Constitution to national and state legislative and executive action."

"Strangely enough this power of the courts to interpret and enforce constitutional clauses is not explicity granted in American Constitutions.

"It has been inferred by the courts from the existence of the constitutional restrictions and the duty of courts to apply in lawsuits the higher law of the Constitution against the inferior law of the legislatures whenever the courts find a conflict between the two.

"Since the Federal Constitution ordains a Federal system of government, it is necessary to have some organ vested with authority to restrict the states and the nation to their respective spheres.

"The Constitution declares itself to be the supreme law of the land and directs state judges to disregard state statutes that are in conflict with valid exercises of national power.

"This is ample warrant for the power exercised by the Supreme Court to declare state statutes invalid as encroachments on national authority and to declare national statutes invalid as encroachments on state authority.

"This work of umpiring the federal system without any clear guidance in the language of the Constitution is a work that the courts cannot escape if the federal system is to continue. The Constitution for the most part contents itself with broad outlines and eschews details. In effect it left to the judiciary the work of drafting details which the framers wisely failed to do. Thus the courts are year by year makers of the Constitution in the sense of the Constitution that actually controls.

"Constitutional law in the United States is continuous Constitution-making by judiciary. In conventional theory, constitutional law is the interpretation of the language of the Constitution, but in plain fact it is to a large extent a law created by the courts from considerations of statesmanship and with but little restraint or direction in the language of the written instrument."

EARL L. SHELTON,
777 80th-pl- s, Birmingham.

HIGH COURT BARS SCHOOL BIAS PLEA

Texas Negroes' Case to Stay on U. S. District Docket

Special to The New York Times.

WASHINGTON, April 22—The Supreme Court ruled today, in effect, that lower Federal courts must keep school segregation cases on their dockets until state-imposed discrimination against Negroes had been eliminated.

The high court refused to hear an appeal by the Wichita Falls, Tex., school board from a ruling of the Fifth Circuit Court of Appeals.

This ruling directed a Federal District Court in Texas to retain jurisdiction over a suit brought by twenty Negro children to compel their admission to a Wichita Falls school.

Court's Order Cited

The Negro children were refused admittance in September, 1955. They were told they would have to go to a segregated school until a new school building was completed.

The new building was finished in January, 1956. White pupils were transferred to the new school and the old school was operated, nominally on a non-segregated basis, but with only Negroes attending.

The Wichita Falls school board pointed out that legally the school to which the Negroes sought admission was desegregated, and that it had declared its intention to desegregate all schools by the middle of this year.

This, the board asserted, constituted a reasonable effort to comply with the Supreme Court's order requiring desegregation of schools with "all deliberate speed."

A Federal District Court agreed with the school board and dismissed the Negroes' complaint. The Court of Appeals, however, reversed the ruling.

Until there has been full compliance with the Supreme Court's order, the Appeals Court said, Negroes would be denied their "constitutional right to be free from state-imposed discrimination."

Wichita Falls, in its appeal to the Supreme Court, said that the effect of the Appeals Court ruling would be to compel the District Court to "act as a super-school board in overseeing the day-to-day administrative action of the duly elected school board in the conduct of the public school system."

Judge Ben F. Cameron of the Court of Appeals sustained this position of the school board in a dissenting opinion.

He said the majority ruling armed "one party with a weapon carefully leveled at the other, inviting one to put the weapon into operation, compelling the other to engage itself in protective measures."

Racial Cases Must Remain On Dockets

Texas School Board Thwarted In Appeal To Supreme Court

WASHINGTON, April 22 (AP)—The Supreme Court emphasized again today that it expects federal district courts to keep tabs on steps toward eliminating racial segregation in public schools.

It did so in denying without comment an appeal brought by the Wichita Falls (Tex) school board.

The board had appealed from a decision by the U. S. Court of Appeals in New Orleans directing a district court to keep on its docket a suit by Negro children for admission to public schools nearest their homes.

The school board contended that under its policy of desegregation of all schools the Negroes' request had been granted. The district court for northern Texas agreed with the board and dismissed the complaint.

FREE TRANSFER PRIVILEGE

The court of appeals, however, directed the district court to retain jurisdiction in the case. It said that while the Negro children had been admitted to the public school nearest their homes, "it is by no means certain that they had the same free privilege of transfer to or attendance at any school of their choice as was accorded the white children."

The school board said in its appeal that the appellate court's decision compels the district court to act as "a super school board in overseeing the day-to-day administrative action of the duly elected board in the conduct of the public school system."

In its May 1955 decision calling for the end of racial segregation in public schools "with all deliberate speed," the Supreme Court directed that "during the period of transmition, the (district) courts will retain jurisdiction in these cases." These cases were the five directly involved in the court's decision a year earlier that racial segregation in public schools is unconstitutional.

High Court Decision Put a Strong Stress On Academic Liberty

By JAMES RESTON

Special to The New York Times.

WASHINGTON, June 18—The Supreme Court was more in the mind of the capital today as a result of its recent decisions on individual liberties than at any time since its great battles with President Franklin D. Roosevelt during the early days of the New Deal.

Following on its decision in the public school segregation cases, it now has spoken out on the other great controversies of the post-war era: individual liberty vs. national security; the rights and responsibilities of Government employes; the investigative power of state and Federal Legislatures; and the ancient traditions of the sanctity of reputation, the right of privacy, and academic freedom.

Today, legal experts in the Senate were conceding that the court had put fundamental and historic restrictions on a Congressional investigatory power that in recent years had been asserted as all but limitless.

High Court Criticized

Many Senators severely criticized the high court in its reversal of the conviction of John T. Watkins for contempt of Congress. Others suggested that wholesale reform of procedures might be needed if the investigative pattern, particularly in the field of alleged subversion, is not to collapse.

Also throughout today constitutional lawyers here were studying the implications of this month's decisions by the court, and they were pointing to the order in the case of Prof. Paul M. Sweezey v. the State of New Hampshire as an expression of the new court's attitude toward due process under the Fourteenth Amendment.

Professor Sweezy, author and lecturer, was twice summoned before Attorney General Louis C. Wyman of New Hampshire and questioned in great detail alleged subversive activities. He was asked about lectures he had made at the university, about his interests in the progressive party, his political views and associations.

He denied that he had been a member of the Communist party, but refused to answer a number of questions about his teachings, his political opinions and associations. Thereupon he was held in contempt by the New Hampshire Supreme Court, and ordered to jail but released on $1,000 bond pending appeal.

Chief Justice Earl Warren, announcing the judgment of the Supreme Court and Justice Felix Frankfurter, concurring, both delivered eloquent opinions in support of academic and political freedom.

Merely to summon a witness and compel his against his will to discolse the nature of past expressions and associations, Chief Justice Warren said, "is a measure of governmental interference in these matters.

"We believe," he wrote, reversing the judgment of the state court, "that there unquestionably was an invasion of petitioner's liberties in the areas of academic freedom and political expression—areas in which Government should be extremely reticent to tread * * *.

"No one should underestimate the vital role in a democracy that is played by those who guide and train our youth. To impose any strait-jacket upon the intellectual leaders in our colleges and universities would imperil the future of our nation."

Frankfurter Notes Denial

Justice Frankfurter noted that Professor Sweezy had sworn that he never, during the lectures at the University of New Hampshire or anywhere else, had advocated the overthrow of the Government by force or violence. Justice Frankfurter added:

"Progress in the natural sciences is not remotely confined to findings made in the laboratory. Insights into the mysteries of nature are born of hypothesis and speculation.

"The more so is this true in the pursuit of understanding in the groping endeavors of what are called the social sciences, the concern of which is man and the society.

"For society's good—if understanding be an essential need of society—inquiries into these problems, speculations about them, stimulation in others of reflection upon them, must be left as unfettered as possible.

"Political power must abstain from intrusion into this activity of freedom, pursued in the interest of wise government and the people's well-being, except for reasons that are exigent and obviously compelling."

Neither Chief Justice Warren, delivering the judgment of the court, nor Justice Frankfurter, concurring for himself and Justice John Marshall Harlan, felt that the State of New Hampshire had given exigent and compelling reasons for their inquiries into Professor Sweezey's lectures, beliefs and associations.

Justice Frankfurter dwelled in his opinion on the spirit of a university, and for this purpose, quoted a recent statement on the need to continue the rfee spirit of the open universities of South Africa, now under attack by the South African Government:

"In a university, knowledge is its own end, not merely a means to an end. A university ceases to be true to its own nature if it becomes the tool of church or state or any sectional interest.

"A university is characterized by the spirit of free inquiry, its ideal being the ideal of Socrates—'to follow the argument where it leads.' This implies the right to examine, question, modify or reject traditional ideas and beliefs.

"Dogma and hypothesis are incompatible, and the concept of an immutable doctrine is repugnant to the spirit of a university. The concern of its scholars is not merely to add and revise facts in relation to an accepted framework, but to be ever examining and modifying the framework itself."

Justice Frankfurter said he was not seeking to compare the situation of the South African universities with those of this country, but he added:

"I do say that in these matters of the spirit inroads on legitimacy must be resisted at their incipiency. This kind of evil grows by what it is allowed to feed on. The admonition of this court in another context is applicable here:

"'It may be that it is the obnoxious thing in its mildest and least repulsive form; but illegitimate and unconstitutional practices get their first footing in that way, namely, by silent approaches and slight deviations from legal modes of procedure."

The Right of Privacy

This is what the Supreme Court now seems to be saying in a great number of cases: not that officials in the Executive and members of the Legislatures have evil objectives or intent, but thta in recent years they seem to have become infected with a spirit of casualness or even indifference toward those legal procedures of due process that were established to defend the sanctity of reputation, and the right of privacy, and to place legal limits on arbitrary action by Government.

In short, the Supreme Court, whose balance has unodubtedly been tipped toward greater concern for individual liberties by the appointments of President Eisenhower in the last four and a half years, now is indeed proclaiming "liberty throughout all the land"—and doing so in no ambiguous terms.

Supreme Court Going Through an Era of Bold Decisions

Herald P.23-a
Mon. 6-17-57
Miami, Fla.

By JAMES M. HASWELL
Of Our Washington Bureau

WASHINGTON — Some people say we have a do-nothing Congress, but no one says we have a do-nothing Supreme Court.

HASWELL

The nation's highest tribunal is going through an era of bold decisions. It is plowing up old precedents and planting new ones rapidly.

Bold decision No. 1 of course was the famous school desegregation ruling handed down just three years ago. Others have followed which have made "new law" affecting practically everybody.

One of the boldest decisions came just the other day. The court decided that a supplier corporation may not own stock in a customer company to insure sale of its goods.

Up until this ruling lawyers had thought the anti-trust laws applied chiefly to competitors. The lesson of the General Motors case is that it applies also to sellers and buyers, wholesalers and retailers, producers and consumers, etc.

Every corporation lawyer in the country will have to review the position of his clients

Just the week before, the Court ruled that "police information" can't be kept confidential if the government puts the author of it on the witness stand. In the "Jencks case" the court held the FBI must disclose files, memos, etc., turned in by an informer, if it uses the informer's testimony.

Worried cops fear stoolies won't tell 'em anything now. Certainly stool pigeons won't say very much in writing.

In an earlier case the court said that blood taken from an unconscious man can be used to show he was drunk. This will work a change in police accident investigation procedure.

Within the month the court has said that military tribunals cannot try dependents of military people overseas. This bold decision stops the military drift toward setting up American military super-governments in the foreign countries.

In other sweeping decisions the court recently said local censors may not limit public sale of books just to books judged fit for children, and that unions may not spend cumpulsory dues on political television shows.

In this term, too, the Supreme Court held the National Football League subject to the anti-trust laws. This bold decision raised the companion question: If professional football is a business as well as a sport, how can professional baseball claim to be a sport and not a business?

Something for everybody to think about. That seems to be the current Supreme Court motto.

Supreme Court Underscores Ruling

Times-Picayune
New Orleans, La.
P. 14
6-18-57

District Judges to Chart School Mixing Steps

WASHINGTON, Oct. 14 (AP)—The Supreme Court today underscored its ruling that specific steps in school integration cases are to be left in the hands of local U. S. courts to determine whether the time is ripe for Negroes to be enrolled in all-white schools.

The tribunal did so in refusing to order the immediate admission of a Negro, Virgil Hawkins, to the University of Florida law school. It told him to bring his suit in an appropriate U. S. District Court.

Convictions Set Aside

In other actions today—the first all-out business session of its new term which opened last Monday—the tribunal:

1. Set aside the convictions of Junius I. Scales and Claude M. Lightfoot, first two persons tried clause of the Smith Anti-Comumnist Act. The government had said the convictions had to be upset in the light of the high court's Jencks' case ruling of last June.

2. Set aside on a government motion the convictions of three Portland, Ore., residents for refusing to answer questions asked by a House subcommittee on Un-American Activities. Herbert Simpson, Donald M. Wollam and John Rogers MacKenzie refused to tell anything but their names when the subcommittee on June 18 and 19, 1954, held hearings on Communist activities in the Portland area. The three pleaded the Fifth Amendment.

'Hot Cargo' Handling

The Justice Department in a memorandum to the high tribunal said some of the questions might have tended to be incriminating.

3. Agreed to rule whether union inducement of employes not to handle "hot cargo" is legal under some labor - management contracts.

The contracts contain "hot cargo" clauses which allow union members to refuse to handle nonunion or struck goods. The legal issue is whether inducement to refuse to work on "hot cargo" violates the secondary boycott provisions of the Taft-Hartley labor law.

U. S. courts of appeals have divided 2-2 in cases involving the issue.

World Court Case

4. Agreed to rule on efforts by Interhandel, Swiss holding firm, to keep alive a suit to recover stock control of General Aniline & Film Corp.

Interhandel was owner of more than 90 per cent of the capital stock of General Aniline & Film. The stock was seized by the government during World War II Basis of the seizure was that Interhandel was controlled by I. G Farben, a German enemy corporation.

The world Court also is considering the case.

5. Granted Max Lerner, a New York City subway conductor, a review of his dismissal for refusing to state whether he ever had been a Communist party member.

Lerner's dismissal was ordered under the 1951 New York security risk law, which says evidence of membership in an organization found by the State Civil Service Commission to be ubversive makes an employe a security risk.

Reviews Granted

6. Set aside the contempt conviction of Willard Uphaus for refusing to supply a list of guests at the World Fellowship Center at Albany, N.H.

7. Agreed to review a decision requiring lower Panama Canal tolls. The decision, by the U.S. Circuit Court in New York, was given in a suit by Grace Line, Inc. and other steamship lines which use the canal.

8. Agreed to review the contempt conviction of Milton Knapp, Bronx manufacturer, for refusing to answer questions asked by a New York County grand jury during a 1956 investigation of alleged bribery of Teamster Union officials.

9. Agreed to review a decision that a widow who receives the proceeds of her husband's life insurance policies is not liable for his unpaid federal income taxes. The decision given by the U.S. Circuit Court in Cincinnati rejected government efforts to collect $32,777 in income taxes and penalties from the widow of Dr. Milton J. Stern, of Lexington, Ky.

Decisions Let Stand

10. Let stand by refusing to review a state court decision upholding a Connecticut "drunk" law. Th elaw makes an alcoholic beverage dealer liable for damages if he sells to an intoxicated person and the "drunk" thereafter causes any injuries.

11. Also let stand a decision permitting a cut in back pay ordered by the National Labor Relations Board for employes found to have been unlawfully discharged.

The decision, by the U. S. Circuit Court in Cincinnati, applied to instances where discharged employes made good-faith efforts to get new jobs in their line of work but were unable to do so.

The Circuit Court said that if the employes failed to seek a different type of employment, even though at lower wages, the back pay ordered by the board should be reduced.

'Fair Trade' Plea

12. Rejected the plea of General Electric Co. for review of a U. S. Circuit Court decision in New York permitting a Washington, D. C., mail order firm to advertise and sell GE products in New York at below "fair trade" prices.

The decision upheld business activities in New York permitting a Washington, D. C., mail order firm to advertise and sell GE products in New York at below "fair trade" prices.

The decision upheld business activities in New York State by Masters Mail Order Co. of Washington, D. C., Inc.

13. Refused to review the conviction of Acy Lennon, a secretary to Rep. Powell (D-NY) on four counts of federal income tax evasion.

Supreme Court Opens Term As Calm Center of Turmoil

By Morrey Dunie
Staff Reporter

All was calm and tradition yesterday as the Supreme Court of the United States opened its 1957-58 term.

While controversy raged about the tribunal's decisions of recent years, the Court itself appeared to be a placid center of great turbulence.

The only order of business the first day in the marble-columned, heavily draped chamber was the admission of 49 lawyers to practice before the Court, but documents were filed portending other possibly controversial decisions.

The nine justices are faced with an unusually heavy docket of some 800 cases and they have already agreed to hear arguments in 113 cases. Even before the Court decides which additional arguments it will hear, it has a workload approaching the 123 cases heard in the last term.

One of the cases that the Court must decide whether or not to hear involves the Virginia Pupil Placement Act, part of the State's program for keeping its schools segregated.

Lower Federal courts found the Act to be unconstitutional and Virginia appealed. If the Supreme Court refuses to review the case, the lower court decisions stand.

However, the Virginia Attorney General's office asked the Supreme Court yesterday to withhold determination of the matter until the State's highest tribunal has an opportunity to rule on the same question in a different case.

The State court is scheduled to hear a case bearing on the Pupil Placement Act this week, with a decision expected early in December.

Should the Supreme Court withhold any action until the State court rules, the final decision on whether the placement law is valid would not be rendered until after Virginia's hotly contested gubernatorial election.

School segregation is the main issue in the gubernatorial race in Virginia.

Sobell Review Asked

In two cases pending before the Supreme Court, "friend of the court" briefs were placed with the court clerk yesterday. Attorneys who said they represent 5300 persons asked the Court to review the case of Morton Sobell, imprisoned for atomic espionage.

Sobell was sentenced to 30 year's imprisonment and is now in Alcatraz. He was convicted with Ethel and Julius Rosenberg, the atomic spies who were executed in 1953.

The Court, which agreed last May to review the contempt conviction and $100,000 fine imposed on the National Association for the Advancement of Colored People by the State of Alabama, also received a "friend of the court brief" in this case.

Lawyers representing 14 national organizations asked permission to intervene on behalf of the NAACP.

If the opposition in both the Sobell and NAACP cases do not object to the briefs, they are filed in the Court. If there are objections, however, the Court decides whether the filings should be permitted.

There are other cases in the segregation and subversive fields pending in the Court. But the Court was not called upon in its opening day to make any pronouncement.

Founding Fathers Left A Loophole

Provided No Check On Usurpation Of Power

To The Commercial Appeal:

America was built by our founding fathers on a firm foundation, one that has weathered the storms of the years.

This foundation was the American Constitution, written by men who envisioned a great nation and one they believed would stand the test of time.

The founding fathers tried to put into the Constitution provisions that would take care of any exigency that might arise, but they overlooked one important point that is now threatening the destruction of the nation.

They included no provision to keep the Supreme Court from overstepping its authority, which it is now doing and giving the death-blow to the Constitution.

A dictatorial government is being set up, composed of nine men without scruples, lacking legal knowledge, appointed for life and with it fear of the consequences of their actions. They fearlessly continue to make a mere scrap of paper of the Constitution of the United States.

It is only natural to assume that the nine will now complete the job and become 100 per cent dictators, and enforce their "law of the land" by the United States Army.

T. W. GRAHAM
Blue Springs, Miss.

Criminal-Registration Voided by High Court

Associated Press

The Supreme Court yesterday struck down, 5 to 4, a Los Angeles ordinance requiring persons convicted of crimes to register with the chief of police.

The Court was told 47 municipalities and five states have similar laws.

Justice William O. Douglas wrote the majority decision, joined by Chief Justice Earl Warren and Justices Hugo Black, Tom Clark and William Brennan. Justice Felix Frankfurter wrote a dissenting opinion for himself and Justices John M. Harlan and Charles Whittaker. Justice Harold Burton wrote a separate dissent.

The Los Angeles ordinance, adopted in 1933, was attacked by Virginia Lambert who in 1951 was convicted of forgery and put on probation. In 1952 the probation order was changed to require her to spend six months in jail.

On Feb. 2, 1955, she was accosted by two policemen. Her counsel said she was searched, "apparently for narcotics." She was taken to a police station, questioned for two hours, and then charged with having failed to register as an "ex-convict."

A jury convicted her and she was put on probation for three years and fined $250.

In her appeal the woman contended that any criminal registration law is unconstitutional because "it requires self-incrimination, is an unreasonable exercise of police power, permits cruel and unusual punishment, encourages unlawful arrest and search, and is a denial of equal protection and due process of law."

Douglas said the ordinance violates the due process of law requirement of the Constitution's 14th Amendment.

Douglas' opinion said the registration act could apply to persons who have no actual knowledge of their duty to register. He added:

"There is wide latitude on the lawmakers to declare an offense and to exclude elements of knowledge and diligence from its definition . . . But we deal here with conduct that is wholly passive—mere failure to register. It is unlike the commission of acts, or the failure to act under circumstances that should alert the doer to the consequences of his deed."

Douglas said the majority felt "actual knowledge of the duty to register or proof of the probability of such knowledge and subsequent failure to comply are necessary before a conviction under the ordinance can stand."

had made a voluntary disclosure, under promise of immunity, of black market income in those years.

The Supreme Court, in a 6 to 3 decision, ordered the full case tried again.

High Court Daggers Constitution, Writers Believe

VOIDING THE CONSTITUTION? — That's what a Mississippian says of the Supreme Court in a letter to the editor this morning. Members of the court are left to right, seated, Associate Justices William O. Douglas and Hugo L. Black, Chief Justice Earl Warren and Associate Justices Felix Frankfurter and Harold H. Burton. Standing, Associate Justices William J. Brennan Jr., Tom C. Clark, John M. Harlan and Charles E. Whittaker.

By Bob Burchette, Staff Photographer

12d

Justice Black Is Married

Supreme Court Justice Hugo L. Black yesterday married his secretary, Mrs. Elizabeth Seay Demeritte, in a quiet Alexandria ceremony. He is 71. She is 49. Justice Black's first wife died in 1951. Story on Page A12.

Post + Times Herald
Washington, D.C.
Fri. 9-13-57
P. 1

Justice Black, Secretary Married in Alexandria

Post + Times Herald
Washington, D.C.
Fri. 9-13-57
P. 12-A

By Phil Casey
Staff Reporter

Supreme Court Justice Hugo L. Black and his secretary, married at his Alexandria home in a ceremony that came as a surprise to many of their friends and associates, held a brief, good-natured reception yesterday—for some persistent photographers.

Strolling through the picturesque garden behind his colonial home at 619 S. Lee st., the 71-year-old Justice posed grinning with his bride, the former Elizabeth Seay DeMeritte, 49, his secretary for more than two years.

They were married at 5 p. m. Wednesday by the Rev. A. Powell Davies of All Souls Church (Unitarian) in Washington, after Justice Black quietly obtained a marriage license at the Alexandria Courthouse.

2d Marriage for Both

It was the second marriage for both. Justice Black's first wife died in 1951. They had been married 30 years. The news Mrs. Black was divorced some years ago from Fred E. DeMeritte of Fairfeld, Ala.

Present at the ceremony were Hugo Black Jr., a Birmingham, Ala., attorney; Martha Josephine Black, the Justice's daughter; Mr. and Mrs. Fred J. DeMeritte of Silver Spring, son and daughter-in-law of the bride, and Jane E. Seay, mother of the bride.

The bride worked for 15 years in United States District Court in Birmingham. She said she came to Washington after Hugo Black Jr. told her his father needed a secretary.

Explaining that they had no plans for a wedding trip, the Justice, senior member of the Supreme Court bench in point of service, said he would be on hand Oct. 7 for the beginning of the term. He was appointed in 1937.

Duties Expanded

A photographer asked who would be boss in the Black household. "Well, she's been running the office, anyway," Justice Black said. "and I thought she might as well run the house." He instructed his wife, a handsome, black-haired and dark-eyed woman: "Smile, like you do when I give orders in the office."

Answering another question, he said, "Well, she says she can cook, but that hasn't been established yet." Mrs. Black settled the issue: "Justice Black has the most wonderful cook," she said. "I'll rest on her laurels."

Mrs. Black wore a two-toned gray dress and gray shoes, with flowers at her shoulder.

The silver-haired Justice, clad in a gray suit, black shoes, white shirt and dark tie, sang al ittle tune as he and his bride strolled through the garden at the photographers' behest.

"As your feet go tap, tap, tapping, and your fingers gaily snapping," he sang.

"Shakespeare?" asked a photographer.

"No, that's a jingle from my school days in Clay County, Ala.," Justice Black said.

One More Stern Warning

Afro-American Sat. 6-22-57

Almost three years before the Supreme Court's 1954 decision, colored school children of New Orleans on Nov. 12, 1951 petitioned the school board to end its discriminatory practice of compelling them to attend segregated schools. Baltimore Md.

The school board immediately rejected the petition and two successive appeals to the State Board of Education were also denied on August 27, 1952. P. A 12A

The issue was joined on September 5, 1952 when suit was filed in U.S. District Court. Then, by agreement, the case lay dormant pending decision on the school cases then before the Supreme Court.

* * *

IN THE MEANTIME, the Louisiana legislature hastily enacted a series of so-called pupil assignment laws seeking under the "exercise of the state's police powers" to maintain segregation in public schools.

The children just as promptly amended their suit challenging the constitutionality of the new laws and asking for a permanent injunction preventing the school board from enforcing them.

A three-judge Federal court held that the laws were not constitutional and a single district jurist, Judge Skelly Wright, on February 15 1956 issued an injunction requiring desegregation of New Orleans schools "with all deliberate speed."

* * *

THE SCHOOL BOARD appealed this decision to the Fifth U.S Circuit Court of Appeals which, in a carefully documented unanimous decision on March 1, 1957, affirmed the lower court ruling.

In so ruling, Circuit Judge Elbert Tuttle, speaking for the court, puts a bright and hopeful new meaning on the cherished Southern word 'interposition' in its relation to the Fourteenth Amendment and so-called states rights.

Says he: "The vindication of rights guaranteed by the Constitution can not be conditioned upon the absence of practical difficulties.

"However undesirable it may be for courts to invoke Federal power to stay action under state authority, it was precisely to require such *interposition* that the Fourteenth Amendment was adopted by the people of the United States.

"Its adoption implies that there are matters of fundamental justice that the citizens of the United States consider so essentially an ingredient of human rights as to require a restraint on action on behalf of any state that appears to ignore them."

* * *

THE FINAL chapter in the long and courageous struggle of these children to secure their constitutional rights was written Monday, June 17, 1957 when the United States Supreme Court without comment wrote: "Affirmed."

In that one word, the nation's highest tribunal not only opened the doors of New Orleans public schools to all children without regard to race, it did something else.

It also served stern warning on Virginia, North and South Carolina, Florida and other states with pupil assignment plans like Louisiana's that it considers such schemes mere screens to perpetuate compulsory segregated schools and a travesty on justice in which the court will not participate

High Court Rule Bars Obscenity

Post-Times Herald Washington D.C. Tues. 6-25-57

The Supreme Court in a series of divided opinions yesterday upheld the right of Federal and State governments to judge and ban obscene material.

The Court wound up its regular work yesterday but will meet again July 8 before starting their summer recess to hear arguments on the Government's contention that Army Specialist William S. Girard should be turned over to Japanese authorities for trial on charges of shooting a Japanese woman on a rifle range. P-12-A

On the obscenity cases the Court:

- Upheld, 6 to 3, an 1872 Federal law making it a crime to send obscene matter through the mails.
- Upheld, 7 to 2, a California law making it a crime to write, publish, sell or exhibit obscene matter.
- Upheld, 5 to 4., a New York law permitting judges to prevent sale of obscene matter by issuing injunctions in advance of publication.

In a related case the Court upheld, 7 to 2, the anti-strip tease ordinance of Newark, N.J.

Two Justices Dissent

Justices William O. Douglas and Hugo L. Black dissented in all four cases. Justice John M. Harlan joined them on the federal case. Chief Justice Earl Warren and Justice William J. Brennan Jr. dissented with them against the New York predistribution injunction law.

Basic legal question in the Federal and California cases, which were covered by a single opinion, was whether obscene matter is protected by constitutional guarantees of freedom of speech and press.

The majority in an opinion written by Brennan met this issue squarely for the first time and decided that it was not. Wrote Brennan:

"All ideas having even the slightest redeeming social importance — unorthodox ideas, controversial ideas, even ideas hateful to the prevailing climate of opinion—have the full protection of the guarantees . . . But implicit in the history of the First Amendment is the rejection of obscenity as utterly without social importance."

One argument against the laws was that while obscene matter might incite lustful thoughts it does not provoke "overt antisocial action" and should not be policed. The majority said this was irrelevant since it had knocked down the First Amendment protection.

To the argument that the word "obscene" is so vague that it permits any enforcement officer to censor according to his own views, the Court answered that the Constitution "does not require impossible standards." Obscene obviously meanc different things to different people, but the definitions in the cases before it were sufficiently precise to give notice of what is prohibited, the Court said.

"Not Synonymous"

The Court tried to distinguish between smut for smut's sake and acceptable literary treatment of sex.

"Sex and obscenity are not synonymous," wrote Brennan. "Obscene material . . . deals with sex in a manner appealing to prurient interests (tending to incite lustful thoughts). The portrayal of sex, e. g., in art, liiterature, and scientific works, is in itself sufficient reason to deny material the contstitutional protection of free speech and press."

The standard for determining what is obscene, said the Court, is whether to the average person set against the background of his community the book taken as a whole would "appeal to prurient interest."

Black and Douglas protested that the opinion "drastically curtails" freedom of speech and press by allowing government to step in and "punish mere speech or publication that the judge or jury thinks has an undesirable impact on thoughts but that is not shown to be a part of unlawful action."

Accepting as a standard that which offends the common conscience of the community would not be acceptable if religion, economics, politics or philosophy were involved, wrote Douglas. "How does it become a constitutional standard when literature treating with sex is concerned"

"Community Censorship"

This permits "community censorship in its worst form," he wrote.

"Government should be concerned with anti-social conduct not with utterances," continued Douglas. "The legality of a publication in this country should never be allowed to turn either on the purity of thought which it instills in the mind of the reader or on the degree to which it offends the community conscience. By either test the role of censor is exalted. The test that suppresses a cheap tract today can suppress a literary gem tomorrow."

Harlan felt it was constitutionally proper for the states but not for the Federal Government to try to police obscene matter.

"The fact that the people of one state cannot read some of the works of D. H. Lawrence seems to me, if not wise or desirable, at least acceptable," he wrote. "But that no person in the United States should be allowed to do so seems to me to be intolerable and violate both the letter and the spirit of the First Amendment."

Warren agreed with the majority that the Federal and State Governments can police this area, but thought the Court went further than it needed to on some points.

Frankfurter, speaking for the New York's injunction law, said it was in line with a "legal remedy long sanctioned by Anglo-Saxon law."

High Court Steadily Widening Guardianship Over Individual Rights

WASHINGTON, June 22 (AP). —The Supreme Court is steadily widening its guardianship over the rights and freedom of individuals, including Communists.

It is doing so by narrowing the limits on how far government—city, state or federal—can go in trying people, questioning them, judging them, segregating them, or interfering with them and their liberties.

It has been acting with increasing firmness since 1954, and particularly this year. Its decisions don't please everyone.

Southerners have attacked it for banning segregation in public schools and elsewhere. Others in Congress have blasted it for its rulings on the side of Communists, defendants in courts, witnesses before committees.

WON'T STOP OR BACK UP

The court refuses to stop or back up. Segregation is an example of how far it is willing to go in asserting its authority.

Congress, the Government's only lawmaking body, because of southern opposition has done nothing in the 20th Century to wipe out state laws against the segregation of Negroes. The court stepped into this gap.

The court outlawed segregation in the schools on the ground that segregation means unequal treatment and discrimination against citizens. Thus the court, in effect, has become in the field of civil rights the American lawmaking body.

WIDE RIGHTS ACTION

In the past five years the court has:

1. Forced the Eisenhower Administration to be far more careful in branding Government workers security risks.

2. Ordered the Justice Department to deal more openly with people it brings to trial, even to revealing pertinent information from its secret files.

3. Made it tougher for the Justice Department, which has been trying Communists in wholesale lots, to try them in the future.

4. Stiff-armed Congress itself by ruling that its committees — if they want to punish a witness for not answering questions — must ask questions that are publicly useful and not merely for the sake of headlines or to injure a witness.

5. Not only consistently backed a witness' right to avoid self-incrimination by taking the 5th Amendment but has insisted the amendment is for the protection of the innocent as well as a shield for those with something to hide.

6. Knocked out the right of the armed forces to court-martial ex-servicemen for crimes committed while in service.

7. Ruled out court-martial — at least for capital offenses—for civilians accompanying the armed forces overseas in peacetime.

8. Forbidden states to try Communists for sedition on the ground sedition is a national security problem and the federal law on the subject has superseded state law.

A natural question occurs: Why has the court become so increasingly vigorous in its protection of citizens against the Government?

The answer may be: Human beings.

UNDERGOES CHANGES

The court has undergone some changes in recent years. Since Earl Warren, former governor of California, became Chief Justice in the fall of 1953 the court has seemed more determined to speak out.

Following are some of the major actions of the court on civil liberties in the past three years, starting with what it did to the Eisenhower Administration:

JUNE 11, 1956—The court tore apart President Eisenhower's federal employe security program under which a Government worker, no matter what kind of job he held, could be fired as a security risk for various reasons.

The court ruled that henceforth only a man employed in a sensitive job could be fired as a security risk. This required a revision of Eisenhower's whole program.

NOV. 7, 1955—The court said the armed forces—once a serviceman had been discharged into civilian life—could never try him for a crime committed in the service.

This ruling was in favor of Robert W. Toth of Pittsburgh, an honorably discharged veteran, whom the Air Force wanted to court-martial in the killing of a Korean civilian.

JUNE 10, 1957—The court threw out the conviction of two Army wives — Mrs. Dorothy Krueger Smith and Mrs. Clarice B. Covert —who had killed their soldier husbands overseas. Both had been court-martialed and given life sentences.

Never again, the court said. It ruled military courts have no right to try civilians in peacetime —at least for capital offenses like murder—since civilians under the Constitution are guaranteed trial by jury.

It is now up to Congress to provide some way of giving jury trial to ex-servicemen who committed a crime in service or a civilian who, while with the armed forces overseas, committed murder.

Crackdown on the Justice Department which prosecutes for federal crimes:

MARCH 25, 1957—The court said that when the Government tries a man it can't—if the identity is relevant to the man's defense—conceal the identity of a government informer against him.

This was in the case of man tried on a narcotics charge. The person from whom he allegedly bought heroin was never identified beyond the usual legal name of "John Doe."

JUNE 3, 1957—The court went far beyond the informer problem. It said:

If the Government uses a witness against a man it is trying, it must let the defendant see anything it has in its files, like written reports, which the witness may have previously given the Government about that defendant.

The reason: Every defendant has a right to try to impeach the testimony of a witness against him. He might be better able to do that if he could compare what a witness says in testimony with what he wrote secretly to the Government.

APRIL 26, 1956—The court said sedition is a national security problem and the Federal Government has laws to take care of that. Therefore, states have no right to try Communists on charges of sedition.

This opinion of the court upset the conviction of Steve Nelson, given 20 years by a Pennsylvania state court after a sedition trial.

MAY 14, 1957—The court set aside the conviction of three people who, in a California cottage, had harbored a Communist fugitive. The latter had gone into hiding after being found guilty of conspiring to overthrow the Government.

The court threw out the conviction of the three people on ground of illegal seizure. FBI agents who raided the cottage had no search warrants but nevertheless carted away every stick of furniture for examination.

MAY 20, 1957—The court decided the Justice Department lacks authority to forbid Communist activity by an alien who has been under a deportation order for three months but whom the Government has been unable to deport.

JUNE 17, 1957 — The court knocked out the conviction of 14 Communists found guilty of conspiring to overthrow the Government. The court's ruling was based on technicalities.

But it warned the Government that in future prosecutions of Communists it must show they did more than just advocate forcible overthrow of the Government; they must be shown to have incited people to action.

The 5th Amendment:

The court repeatedly has upheld the right of a man, questioned by a congressional committee investigating Communism, to take the 5th Amendment to avoid answering. That amendment says a man can't be forced to incriminate himself.

It did so this week in two cases — those of John T. Watkins, a labor organizer, and Paul M. Sweezy, a lecturer and author. In the Watkins case it raised the question of the pertinence of the questions to the committee's investigation. The case of Sweezy was thrown out because of lack of any indication that the New Hampshire Legislature wanted the kind of information the Attorney General tried to get.

A Noisy Minority

Both Theodore Roosevelt and Franklin Roosevelt, while in the White House, made efforts to pack the Supreme Court.

They failed because the American people believed in the type of government as established by the Constitution creating three branches—the President as executive; Congress as legislative; and the Supreme Court as judicial.

In years past, the Roosevelts as chief executives wanted to take over the powers of the judiciary.

The present clamor to usurp the authority of the Court comes from the legislative branch.

Three or four congressmen of the Eastland stripe are yelling for the Supreme Court's scalp.

Rep. George Andrews, an Alabama Dixiecrat, and Rep. Noah Mason, an Illinois stone age Republican, have locked arms in a demand for impeachment of members of the court.

Two Dixiecrat Senators, Olin Johnston of South Carolina and James Eastland of Mississippi and a conservative Republican representative, Lawrence H. Smith of Wisconsin wouldn't go that far.

They have cooked up a pernicious little scheme calling for reconfirmation of the justices every four years.

The Dixiecrats are incensed over the Supreme Court's morally and constitutionally proper ruling that segregated schools are unlawful.

The mossback Republicans are up in arms over decisions reversing contempt convictions of witnesses who had appeared before Congressional committees.

The effect of an impeachment threat or a law requiring reconfirmation of its members would be to make the Supreme Court a tail to the Congressional kite.

The Eastland resolution, of course, wont get off the ground. Neither Eastland nor those who support him expect it to.

What we are witnessing are the death struggles of a noisy minority despairing over its inability to halt the forward march of a liberal Supreme Court.

'Stare Decisis,' Or: When Should Court Reverse Earlier Rulings?

A SMALL GROUP OF DISTINGUISHED LEGAL EXPERTS, who must remain unidentified, has put together some legal history and comment which has a bearing on a basic issue—when should courts change the decisions of previous courts.

The doctrine is that of *stare decisis*, standing by previous rulings. This long has been a matter of interest to judges. Consistency of courts is important. When there is much inconsistency, operations of lower courts can be thrown into confusion. Mr. Justice Roberts wrote, in a dissenting opinion in *Mahnich v. Southern Steamship Co.*, 1944, that "if litigants and lower federal courts are not to (follow precedents reasonably closely) the law becomes not a chart to govern conduct but a game of chance; instead of settling rights and liabilities it unsettles them."

Mr. Justice Roberts went on to say that, "the more deplorable consequence will inevitably be that the administration of justice will fall into disrepute. Respect for tribunals must fall when the bar and the public come to understand that nothing that has been said in prior adjudication has force in a current controversy." And: "The tendency to disregard precedents in the decision of cases . . . has become so strong in this court of late as, in my view, to shake confidence in the consistency of decision and leave the courts below on an uncharted sea of doubt and difficulty without any confidence that what was said yesterday will hold good tomorrow . . ."

Mr. Justice Roberts jabbed in still another case, *Smith v. Allright*, 1944: "It is regrettable that in an era marked by doubt and confusion, an era whose greatest need is steadfastness of thought and purpose, this court . . . should now itself become the breeder of fresh doubt and confusion . . ."

This particular summary had basic reference to the case of *Radovich v. National Football League and Others*, which put pro football under anti-trust regulations, though baseball had been ruled not under them, the reason for this being very obscure.

STILL, THERE IS A SUBSTANTIAL BODY OF HIGH LEGAL OPINION that consistency is not necessary in courts. Mr. Justice Holmes: "It is revolting to have no better reason for a rule of law than that so it was laid down in the time of Henry IV." But although "it may be suggested that at least one reason for precedent is that it enables the expert to exclude the layman (Prof. Arthur L. Goodhart)," departing from precedent involves changes in conditions. This leads legalists to consider whether "the question presented is one of applying, as distinguished from what may accurately be called interpreting, the Constitution (Brandeis)."

Now Brandeis, as is known, was a great one for change. Even so he had something useful to say for those who, especially in the segregation situation, are hopeful that the court's basic decisions may, once more, be reversed.

Brandeis wrote, dissenting in *Burnet v. Coronado Oil and Gas Co.*, that "the doctrine of *res judicata* demands that a decision made by the highest court, whether it be a determination of a fact or a declaration of a rule of law, shall be accepted as a final disposition of the particular controversy, even if confessedly wrong. But the decision of the court, if, in essence, merely the determination of a fact, is not entitled, in later controversies between other parties, to that sanction which, under the policy of *stare decisis*, is accorded to the decision of a proposition purely of law." Query: Did the segregation reversal of *Plessy v. Ferguson* have its base in "fact" or "law?"

Therein may be held some hope, however slight, in further reversals. For the decisions in *Brown v. Board of Education* and *Bolling v. Sharpe*, both 1954, the latest segregation decisions, were based not so much on hard law, as is obvious, as contentions involving "fact," to wit, psychological factors allegedly affecting minds of Negro school children. Moreover, Brandeis flatly conceded that in the abstract, "the earlier decision may have been influenced by prevailing views as to economic or social policy . . ."

WELL, WE KNOW QUITE WELL that the segregation decisions do involve social policy. But wherein was the change, where registered, where mandated by the public mood North or South? That is difficult to determine, hence it should be subject to reconsideration.

Justice Douglas noted in 1949 that in the previous 12 years there had been 30 instances of the court reversing itself, whereas in the 30 years between 1860 and 1890, there had been only 18 reversals. Has there been a change simply for change's sake?

That Dixie Conspiracy

The Southern states keep sticking their legal necks out and just as consistently the Supreme Court keeps lopping them off.

Recently the City of St. Petersburg, Fla., learned that it could no longer legally operate a tax-supported pool and beach from which colored citizens were barred.

And the commissioners of Harris (Houston, Texas) County were advised that the facilities of a courthouse cafeteria, even though operated by a private lessee, must be made available to all citizens without regard to color.

Since the court on repeated occasions had passed on these issues, its decisions could have come as a surprise to no one.

But the needless appeal was resorted to as just another means of delaying the inevitable.

Soon the court is going to grow weary of this contemptuous Dixie conspiracy of delay and delay, evade and evade and appeal and appeal.

The sooner that day comes the quicker will Southern officials halt their blind obstructionism and get down to the serious business of obeying the law.

Baseball Status Unchanged

Supreme Court Denies Review of Football Suit

The Supreme Court yesterday stuck to its decision that professional football is subject to Federal antitrust laws.

The court denied without comment a request for reconsideration by the National Football League.

League attorneys asked for another hearing on grounds the Feb. 25 ruling "constitutes a discrimination against professional football and a preferential 'exemption' of professional baseball."

By a 6-3 majority, the high court held the volume of interstate business involved in organized football placed the sport within antitrust law jurisdiction. This decision, however, did not alter two previous rulings that exempted major league baseball from the same controls.

The court said "the orderly way to eliminate error or discrimination, if any there be," would be by legislation. Some members of Congress interpreted this as an invitation to act, and hearings on a number of sports bills may be held this year.

Measures have been introduced to bring baseball under antitrust coverage and, on the other hand, to exempt all team sports.

JAMES F. BLRNES is calling for congressional curb on the Supreme Court through the constitutional power of Congress to supervise the court's appellate jurisdiction.

It is interesting to recall how Alabama's William Logan Martin fought for this Congressional right nine years ago when the American Bar Association was being asked to advocate an amendment removing it.

He spoke at the same time for protection against Supreme Court misconstruction of acts of Congress, citing accumulating instances in which the court had construed acts as calling for a federalism the Congress never intended.

House of Cards

As almost any lawyer could have foretold, the Supreme Court has let stand the lower Federal Court orders for desegregation of public schools in Arlington and Charlottesville. Neither Arlington nor Charlottesville has a great percentage of Negroes, and in both jurisdictions geographical factors will minimize the necessary adjustment. In neither community will desegregation entail any insurmountable problem if Virginia authorities will encourage local officials to meet rather than evade the issues. Although the Stanley Plan was not involved directly in these cases, one by one the cards in the policy of resistance to the Supreme Court decision are being blown aside. The question is whether there is enough vision in Richmond to lead Virginia into a realistic acknowledgment of the inevitable. Or will the blind and massive resistance still counseled by Senator Byrd leave Virginia to pick up the debris, bereft of any plan, when the whole house caves in?

DAVID LAWRENCE Says:

Courier-Journal
Fri. 5-3-57 Louisville, Ky. P. 7

Supreme Court Decision Raises Some New Discrimination Issues

WASHINGTON.—The Supreme Court of the United States passed a new "law" on Monday. It could affect discrimination on racial or religious grounds in private schools, exclusive clubs and colleges supported or controlled by church groups of any denomination.

The Supreme Court isn't supposed to pass any laws. That's the function of Congress. But now the Supreme Court proclaims as "the law of the land" that a man who left his money in 1831 for a college to which only "male, white orphans" were to be admitted cannot have his wishes entirely respected. If Stephen Girard were alive today, he could discriminate on racial or religious grounds and conduct a private school or college, admitting anyone he chose. But, since he made the mistake of letting a City Government act as trustee for him, the wishes of the original donor cannot be lawfully fulfilled by the trustee.

Dilworth

This is a sensational reversal of centuries of legal doctrine. Up to now it had been thought that a "trustee," as such, was a private person, merely acting for the donor, and that a public official acting as a trustee could do anything that it was lawful for any trustee to do in following the provisions of a will.

But the Supreme Court says that the board of directors of City Trusts—an organization set up by the City of Philadelphia to carry out the terms of wills and estates left in perpetual trust—is an "agency of the State" and not an agency of the donor of the money. Then the Supreme Court invokes the 14th Amendment, which says, "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States."

No public funds are involved in the Girard College case. It consists entirely of private funds of nearly $100,000,000, and the real issue is the board of trustees. There are 14 citizens on it. Two of the 12 are ex officio members, one the president of the City Council of Philadelphia, and the other Mayor Richardson Dilworth. This is not unlike the setup in many states where private colleges and universities operate under a State charter and the Governor is designated as an ex officio member of the board of trustees.

Every college or university—in fact, almost every private club—operates under a corporation charter issued by a State Government. If corporations, which are often referred to as "creatures of the State," are some day to be subject to the rule laid down in the case of Stephen Girard College by the Supreme Court of the United States, it raises a question as to whether any form of discrimination—on religious, racial or political grounds—might come under the ban.

One university here in Washington, for example, operating under a Federal Government charter, is required to select a certain number of trustees from a particular church. Will this be construed as "discrimination"? Many a bank and trust company, in seeking to carry out the wishes of a donor, is sometimes confronted with clauses in the will that require either religious or racial discrimination to be exercised. Can the trustee be enjoined now from carrying out the wishes of the donor if some relative or other outside persons choose to challenge the fulfillment of the provisions of the will on the ground that the trustee is "an agency of the State" and hence cannot violate the 14th Amendment?

Throws Little Light

These are questions of degree and scope on which the new decision, which happens to be brief, throws little light. Also, to what extent will States hereafter be limited in making their own rules on wills and trusts?

The new decision of the Supreme Court is avowedly based on the school-segregation ruling handed down in 1954, but it raises more questions than it answers.

Court Curbs Military On Trial of Civilians; 2 Women Are Freed

Times 6-11-57
New York

By LUTHER A. HUSTON
Special to The New York Times.

WASHINGTON, June 10—The Supreme Court ruled today, 6 to 2, that the Constitution forbade military courts from trying civilians for capital crimes committed abroad.

A year and a day ago the high court had held that such trials were constitutional.

Today's reversal of the earlier decision freed two women who had been convicted by courts-martial and sentenced to life imprisonment. They are:

Mrs. Dorothy Krueger Smith, convicted of slaying her husband, Col. Audrey D. Smith, in Japan in 1952.

Mrs. Clarence B. Covert, who was found guilty of the murder of her husband, Edward E. Covert, a master seargeant in the Air Force, at Upper Heyforth, England, on March 10, 1953.

Reverses '56 Ruling

On June 11, 1956, five members of the high court ruled that "all persons accompanying the armed forces without the continental limits of the United States" were subject to the Uniform Code of Military Justice. Today six members concluded that the previous decision "cannot be permitted to stand."

Justice Hugo L. Black, who wrote today's majority opinion, said that the cases of Mrs. Smith and Mrs. Covert raised "basic constitutional issues of the utmost concern."

"They involve the power of Congress to expose civilians to trial by military tribunals, under military regulations and procedures, for offenses against the United States thereby depriving them of trial in civilian courts, under civilian laws and procedures and with all the safeguards of the Bill of Rights," Justice Black declared.

"These cases are particularly significant because for the first time since the adoption of the Constitution wives of soldiers have been denied trial by jury in a court of law and forced to trial before courts-martial."

Justice Black rejected "the idea that when the United States acts against citizens abroad it can do so free of the Bill of Rights." He held that Mrs. Smith and Mrs. Covert could not constitutionally be tried by military authorities.

Chief Justice Earl Warren, Justice William O. Douglas and Justice William J. Brennan Jr. concurred in the opinion written by Justice Black. Justices Felix Frankfurter and John H. Harlan wrote separate concurrence.

Times P. H-C

The dissenters were Justices Tom C. Clark and Harold H. Burton. Justice Charles E. Whittaker did not participate.

A year ago the majority consisted of Justices Clark, Burton, Harlan, Stanley F. Reed and Sherman Minton. Justices Reed and Minton have since retired.

Justice Frankfurter reserved decision at the time. There were indications, however, that he had dissented from the majority opinion.

Harlan Changes View

Justice Brennan, who replaced Justice Minton, lined up with the previous dissenters. Justice Harland changed his position on a narrow ground that permitted him to vote with today's majority. Justice Frankfurter concurred this time, where he probably would have dissented before.

Justices Clark and Burton stood firm, although this time they were in the minority. Justice Clark wrote a sharp dissent in which he asserted that "Justice Burton and I remain convinced that the former opinions of the court are correct and that they set forth valid constitutional doctrine under the long-recognized cases of this court."

At the opening of the present term, the court granted a petition for a rehearing in the Smith and Covert cases. They were reargued on Feb. 27. J. Lee Rankin, the Solicitor General, appeared for the United States and Frederick Bernays Wiener of Washington for Mrs. Smith and Mrs. Covert.

Mrs. Smith is the daughter of Lieut. Gen. Walter Krueger, retired, who commanded United States forces in the Pacific in World War II.

Justice Black was emphatic in holding that the Bill of Rights protected civilians accused of crimes abroad. He wrote:

"When the Government reaches out to punish a citizen who is abroad, the shield which the Bill of Rights and other parts of the Constitution provide to protect his life and property should not be stripped away just because he happens to be in another land.

"This is not a novel concept. To the contrary it is as old as government. It was recognized long before Paul successfully invoked his right as a Roman citizen to be tried in strict accordance with Roman law."

The rights that Justice Black held had been denied to Mrs. Smith and Mrs. Covert are contained in Article III and the Fifth and Sixth Amendments of the Constitution.

Article III lays down the rule that the trial of all crimes, except in cases of impeachment, shall be jury in the state where the crimes were committed; "but when not committed in any state," at places designated by Congress.

The Fifth Amendment provides that no person shall be held to answer for a capital or infamous crime, except on presentment or indictment of a grand jury, except in cases arising in the land or naval forces when in actual service in time of war or public danger.

The Sixth Amendment assures an accused person of a speedy and public trial by an impartial jury, in the state and district where the crime was committed.

Justice Black said that the Supreme Court and other courts had held that "various constitutional limitations apply to the Government when it acts outside the Continental United States."

At the time of Mrs. Covert's offense the United States had an agreement with Great Britain that permitted United States military courts to exercise exclusive jurisdiction over offenses committed in Great Britain by American servicemen or their dependents. Justice Black said that "in all material respects the same situation existed in Japan when Mrs. Smith killed her husband."

Justice Clark, in his dissent, asserted that historically the military always has exercised jurisdiction by court-martial over civilians accompanying the armed forces. He said the provision of the military Code which the majority invalidated was taken from the provisions of the Articles of War passed by Congress more than forty years ago.

Congress could have established a system of territorial courts to try offenses committed by civilian dependents abroad, Justice Clark said, but it had not done so.

Justice Harlan's concurrence was on the narrow ground that in capital offenses the provisions of the military code could not be constitutionally applied to trials of civilian dependents of members of the armed services overseas in peacetime.

High Court Upholds Integration at Florida Pool and Texas Cafe

Pleas Aimed At Negroes Are Rejected

By LUTHER A. HUSTON

(Copyright 1957 by The New York Times Co.)

WASHINGTON, April 1 — The Supreme Court rejected today appeals from lower court judgments ordering desegregation at a Florida swimming pool and a Texas courthouse cafeteria.

Negroes in both cases contended that segregation deprived them of equal protection of the laws as guaranteed by the 14th amendment to the Constitution. This was the grounds on which the Supreme Court, in 1954, outlawed segregation in the public schools.

St. Petersburg, Fla., sought review of a lower court order enjoining segregation in a pool and beach operated by the municipality. The city contended that the 14th amendment was a prohibition of acts of states and was not applicable to a municipality acting in its private, or proprietary, capacity.

MUNICIPAL PROFIT

The pool is operated as a business, the city contended, and fees charged for admission accruel to the municipal government.

"Under the present social system, operation on a non-segregated basis would result in closing of the pool and beach for lack of revenue and deprive the citizens of the city of this facility," the city asserted.

A pool maintained for Negroes in the same section of the city was closed for lack of revenue. The municipality said it could not afford to run the utility at a loss.

COUNTY CAFETERIA

The Texas case involved a suit by Negroes to restrain the officials of Harris County, which embraces Houston, from denying them equal use of a cafeteria in the courthouse basement. The county leased the cafeteria to W. F. Derrington.

A federal district court enjoined from refusing admission to Negroes and the county from renewing Derrington's lease or executing new leases without assurance that Negroes would be admitted on an equal basis with white persons. The court of appeals affirmed.

The principal contention of Harris County on appeal was that the trial court lacked jurisdiction to compel it, as an instrumentality of the state, to take "overt positive action" under the 14th amendment to prevent acts of discrimination committed by a lessee in the conduct of his private business.

"To give one man the right to mingle with another against the will of the latter is to deprive the latter of his right not to mingle," the county also argued. "Protection of a minority, if carried to extremes, must result in a tyranny of the minority."

Both appeals were from judgments of the fifth circuit court of appeals, at New Orleans. Texas and Florida are in that circuit.

The Supreme Court's rejection was in a brief order that gave no reasons for its action. The court has uniformly refused to hear appeals from subordinate court orders directing integration since its ruling in the school cases.

WARNS THOSE WHO WOULD DISCREDIT HIGH TRIBUNAL

NEW YORK — (INS) — Attorney General Herbert Brownell, Jr. said Friday night he believes the Supreme Court's school desegregation decision "will stand the test of time."

Brownell defended the high court ruling in an address prepared for delivery at a Columbus Law Review Dinner.

He said that "In a great many communities, where racial segregation in public schools had been the accepted custom for many years the people have already responded as typical Americans and are following the court's decision."

The attorney general added that the judicial branch is "not above criticism," and pointed out that "it not only tolerates but thrives on its own dissents."

But criticism, he contended, should be "Fair, responsible and informed if it is to be respected."

He declared: "Anyone who tears the court down does as much harm as tearing down the congress, the executive branch and for that matter, all government as well. Any attempt to wantonly discredit the court is a disservice to freedom itself."

The Attorney General reviewed the high court's history and recalled several previous occasions when it came under fire from segments of the American people.

But he likened it to the umpire at a baseball game who, when he "calls a close one," is panned" by one or the other team and by the fans no matter how right his decision may be.

He concluded: "The independence of the supreme court will be secure only so long as it is sustained by the confidence of the public and the bar. And so long as the supreme court is independent, the people may be assured of equal justice under law."

Teenage Columnist—

Stennis Bill To Raise Qualifications Of Supreme Court Justices Approved

That's The Opinion Of New Albany High School Student

By CHARLES TANNER

SENATOR JOHN STENNIS (D., Miss.) recently introduced a resolution in the Senate, which, if passed, would require at least one out of every two future appointees to the Supreme Court to have at least 10 years "judicial experience." This resolution was introduced to guarantee that at least one-half of the Supreme Court Justices in future years would be experienced judges.

The duty of appointing justices to the Supreme Court is constitutionally vested in the President, who must seek the "advice and consent" of the Senate.

Must Meet Qualifications

Through the years it has been customary for the Senate merely to consent, but Senator Stennis' resolution would require the Senate to make the judges meet these qualifications before it consents.

The senator desires to insure the presence of experienced judges on the bench, but at the same time he wants to make it possible for outstanding lawyers who are capable to be permitted to serve as judges. That is why he provides for only "one out of each two successive nominees confirmed by the Senate . . . shall . . . have had at least 10 years of judicial service."

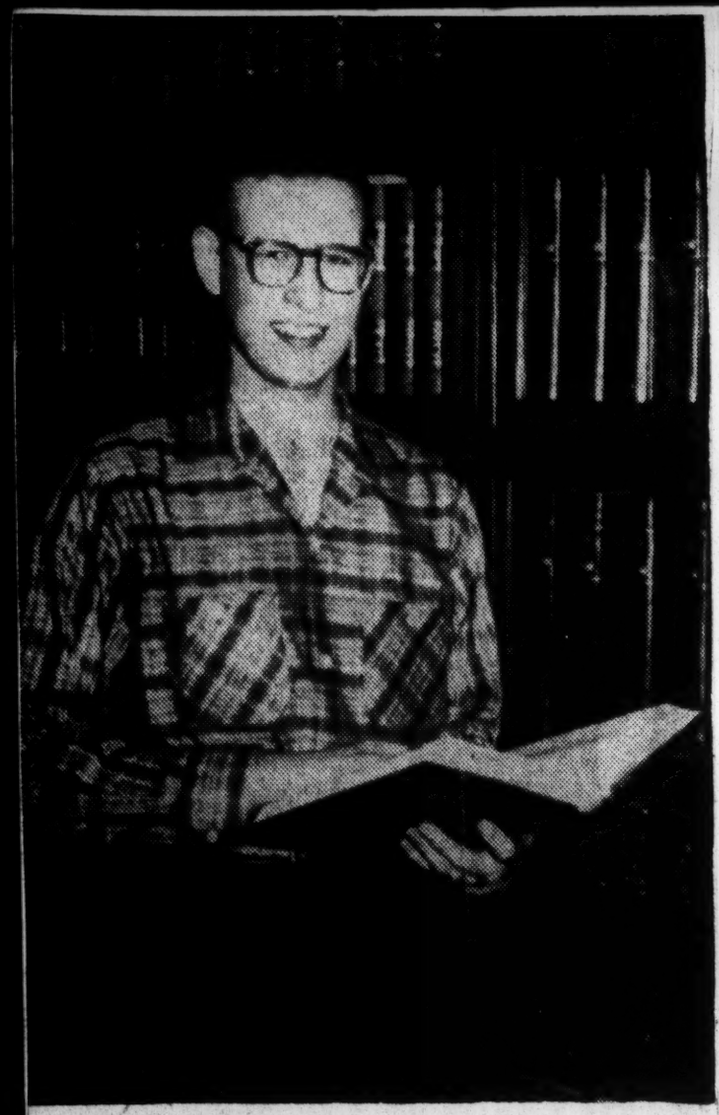
The senator pointed out that more cases decided by the Supreme Court since 1932 have been reversed by Congress than were reversed in its 142-year history preceding 1932.

Need Seasoning

This shows that the trend is to appointing justices who, for some reason or another, are not able to interpret Congress' laws as Congress wishes them to be interpreted. The reason seems to be that the judges lack the "seasoning" that actual judge duty gives them.

Too much authority is vested in the Supreme Court for us to allow the haphazard appointment of judges. If we are to keep our Supreme Court a respected and admired example for other nations, we must make sure that our standards are not lowered, but raised.

Senator Stennis met with no opposition on the floor when he introduced the resolution. Senator Bricker of Ohio openly supported it, and a press clipping from the New York Times stated that President Eisenhower would not appoint justices without judicial experience unless it was an extremely extraordinary



STEP FORWARD—That's the viewpoint of Charles Tanner, student at the New Albany, Miss., High School and this week's Teenage Columnist. Charles tells why he approves a resolution recently introduced in the Senate by Senator John Stennis which would require at least one out of every two future appointees to the Supreme Court to have a minimum of 10 years "judicial experience."

case, thus showing that the resolution does not conflict with the President's views.

In fact, there seems to be no one who is openly opposed to the resolution. There is no logical reason why anyone should be.

It is a great step in legislative history, and, if passed, will stand as a milestone on our nation's road to more perfect government.

Warren Fears 'Denial of Justice' in Federal Court Jam

Post & Times Herald 5-26-57

Chief Justice Earl Warren said yesterday congested calendars in some Federal courts have resulted in "almost a denial of justice to the litigants."

To help, he asked Congress to authorize 42 additional judgeships as recommended by the Judicial Conference of the United States. The Conference consists of the 11 Federal Circuit chief judges and the Chief Justice.

There are also 13 vacancies in the court system which should be filled soon, Warren told the opening session of the American Law Institute's three-day annual meeting at the Mayflower.

Additional help must come from retired judges, he observed, to make "satisfactory progress in eliminating congestion."

"Even then, there will be much to be done," he added.

He asked "the Bench and the Bar" to cooperate in inaugurating administrative changes and finding "better methods to dispatch the business of the courts."

New York's Southern District has "a four-year lag and backlog," he said.

Washington was the only city singled out for praise.

"Due to the change in divorce jurisdiction in the District of Columbia, the District Court has been able to reduce substantially its backlog of pending cases. The terminations in other districts have not kept pace with . . . new filings," Warren reported.

The situation, however, is not "bad enough to cause dismay," he told an audience of 500 judges ,attorneys and law school deans.

"We a. within striking distance of good administration in most districts and circuits, and with united effort we should be able to make progress," he concluded.

Warren has warm praise for Sen. George Wharton Pepper, who was presented a special medal "for years of distinguished service as president and council chairman" by the American Law Institute.

After the Chief Justice departed, the Institute began its annual task of planning model laws which it hopes to have adopted by state legislatures. Yesterday they discussed juvenile courts and youthful criminals. Obscenity and perjury laws are to be considered this morning.

Congress Has Power To Curb The Court

Post Herald Birm., Ala., Wed. 5-6-57

This is a tragic period in the life of the American republic. It is the pivot upon which rests the fate of a mighty nation. Our nation is now in the throes of confusion and uncertainty.

The Supreme Court of the United States appears to have selected the South as its target for the annihilation of all the Southland holds—her proud heritage, her pure Anglo Saxon blood, her traditions, her line of statesmen and presidents prior to the Civil War. It is, indeed, a narrow-minded court that seeks to place upon our beloved Southland a crown of thorns and crucify our land on a cross of venom and hate.

The Negro is not the South's problem. Our problem is the United States Supreme Court. History records the death of once powerful nations, proud nations, that mixed their blood with inferior races.

The Supreme Court seems to care nothing about posterity. Either it has not the vision, or it is so wrapped in socialism, idealism, Karl Marx-ism, and communism, that it cares naught for the preservation of the white race.

The House of Representatives has the power to curb that court —will they? It has the power to impeach any member, or all members—will they?

The Supreme Court has usurped the legislative branch of our government, and yet the Congress has done nothing about it. There are three studies the Supreme Court should pursue: the Holy Bible, the Constitution of the United States, and the history of nations.

That court seems to be pitifully ignorant of all three.

Integration is not the only matter involved in the Black Monday decision of the Supreme Court. The destruction of state sovereignty should arouse every state of the union to the dangers confronting them.

Should President Eisenhower exercise as much zeal for state rights as he now displays for civil rights, the NAACP, and the GOP emblem he would go down in history with a much better record than he has thus far achieved.

We have had one great President since the Civil War—President Woodrow Wilson. Like many of his eminent predecessors, he also was a native Virginian. He was crucified upon the cross of the League of Nations. And now, long after his death, his League of Nations takes the form of United Nations.

L. B. RAINEY,
Gadsden

Third Anniversary

Afro-American Baltimore, Md. 5-18-57

Three years after the Supreme Court ruled that segregation in tax-supported schools is unconstitutional, the need for action on the part of both legislative and executive branches of government in implementing it, is more apparent than ever.

The record shows that since May 17, 1954, a total of 2,175,000 children, who previously attended segregated schools, are now seated in integrated classes.

Of this number, 1,850,000 are white; 325,000 are colored.

This record of compliance written largely in the border states, seems encouraging until the fact becomes known that there are seven million white children and 2,400,000 colored children still compelled by defiant school districts to attend separate but unequal schools.

Nine states — Delaware, Maryland, West Virginia, the District of Columbia, Missouri, Oklahoma, Arkansas, Tennessee and Texas—have begun or completed the desegregation process.

But there are eight states—Virginia, North Carolina, South Carolina, Alabama, Georgia, Florida, Louisiana, and Mississippi — which have literally thumbed their noses at the court's admonition to proceed with "all deliberate speed."

Moreover, their legislatures in brazen defiance of the law, have loaded their books with a labyrinth of clearly unconstitutional legislation in a frantic effort to prop up the sagging structure of segregation.

These resolutions range from manifestos to the legal monstrosity, interposition; from the pupil assignment dodge to the private school scheme; from outlawing the NAACP to disbarring lawyers who challenge the legality of state-enforced discrimination.

All of which leads to the question, should these eight rebel states be rewarded by the Federal Government for their intransigence?

Should tax money be extracted from the 40 law-abiding states to finance unconstitutional and prejudiced operation of schools in the eight?

The House Education Committee, in rejecting the insertion of an amendment to the Federal aid to school construction bill last week, answered both questions with a disappointing affirmative.

But as Rep. A. Clayton Powell, the author of the amendment, later explained, the fight has just begun.

There is good reason to believe that guarantees against the allotment of

money to states or school districts which refuse to obey the law will be adopted by the House as a whole.

This is as it should be.

It makes absolutely no sense for one arm of the government to appropriate money for the erection and maintenance of schools another arm has held to be legally and morally wrong.

WASHINGTON

A Defense Offered For Silent Supreme Court

BY ROSCOE DRUMMOND

NEARLY EVERY President has had to defend his constitutional powers from congressional encroachment. Mr. Eisenhower had a hard time keeping his authority to police the federal personnel from slipping into the hands of eager congressmen.

Nearly every Congress has had to defend its independence—sometimes not too successfully—from presidential encroachment. For a considerable period during Franklin Roosevelt's dominance Congress found itself more a subordinate than a coordinate branch of the government.

It seems to me time somebody raised a voice to defend the third branch of government, the United States Supreme Court. The President can defend himself. Congress can defend itself. But the justices of the Supreme Court, speaking only through their opinions, can never speak in their own behalf.

The court is today the target of some turbulent controversy because of its trend of opinions on racial questions even as it was the target of turbulent controversy 20 years ago when it was striking down some of the early New Deal legislation as unconstitutional.

Criticism Of Authority Of Court Is Dangerous

CRITICISM OF the court's rulings is healthy and desirable. The legal opinions of judges should be no more sacrosanct than the political opinions of politicians. That the opinion of the Supreme Court is legally final does not make it infallible; it isn't. Judge Jennings Bailey, a rugged individualist on the federal district bench in Washington, put it rather nicely when, informed that the Supreme Court had sustained one of his rulings, he remarked: "Huh! I still think I was right."

But criticism of the authority of the Supreme Court seems to me unhealthy and dangerous.

The Constitution does not spell out the precise role the Supreme Court shall play. It remained for the court itself to defeine its function and it was largely through the force and cogency of the opinions of Chief Justice John Marshal that the court established itself as the interpreter of what laws, state and federal, are constitutional and what are not.

Court's Jurisdiction Untouched 150 years

WHEN SOME deeply resent a decision of the court, they often attack the jurisdiction of the court. But the fact remains that while the court originally asserted its role as interpreter of the Constitution, no action has ever been taken, either by Congress or by the people, to alter or restrict its authority one iota. Such a course has been open to us for nearly 150 years but the jurisdiction of the court remains untouched. When, in 1937, President Roosevelt tried to mold the opinions of the Supreme Court more to his liking by his "court-packing" plan, he suffered the severest defeat of his career. The Senate overwhelmingly rejected his scheme and in the congressional elections next year the country took some 80 Democratic seats in the House of Representatives away from him.

Above all else the court does two things:

It prevents the federal government and the state governments from encroaching upon each other, thus preserving the balance of our federal system.

It protects the constitutional liberties of all the people from encroachment by either the states or the federal government.

We should never forget that if we undercut the right of the court to determine what is constitutional, then any majority of Congress at any time can pass any law it wishes without having it measured against the Constitution. That way, constitutional government would go out the window.

The quality of President Eisenhower's appointments to the Supreme Court contributes to its continued strength.

Brownell's Administration Is Called Able

WITH THE RETIREMENT of Justice Stanley F. Reed, Mr. Eisenhower has now to make his fourth appointment to the high bench in four years. In naming Chief Justice Earl Warren, and Justices John M. Harlan and William J. Brennan, Jr., he has set a high standard to maintain.

If the President decides to go outside the judiciary for his nominee, it is not at all unlikely that he would name Attorney General Herbert Brownell, Jr. There would be some elements of controversy in such an appointment but they would be outweighed by Mr. Brownell's able administration of the Justice Department, his persistent efforts to expand and strengthen the judiciary and his large role in recommending to the White House the highest caliber of men for judicial appointment.—©

Louisiana May Join Georgia Impeachment Bid

BATON ROUGE, La., Feb. 14 (AP) —A Louisiana segregation leader said today a resolution similar to the Georgia proposal for impeachment proceedings against six U.S. Supreme Court justices would be considered for introduction in the May Legislature.

In Atlanta, a resolution has been introduced in the Georgia House calling upon the Georgia House delegation to begin impeachment steps against Chief Justice Earl Warren and five associates.

The Georgia document, awaiting legislative action, accused the six justices of "unlawfully" usurping powers of the people to amend the Constitution. Some of the court rulings cited deal with racial integration.

In Homer, Sen. W. M. Rainach, chairman of the joint Louisiana Legislative Committee on Segregation, was asked his views in a long distance phone talk.

He said a similar proposal "would be considered" for introduction. But the May session is limited to fiscal matters only.

Rainach said his group would have to study that angle too, since a three-fourths vote is required to introduce nonfiscal matters.

Rainach said he has not read the Georgia resolution but would obtain a copy "to study it with interest for its applicability in Louisiana."

The senator added he has no doubt "that most of the justices who participated in the Black Monday decision (the school integration ruling of May, 1954) should be removed from office. . . as I recall, after reconstruction, a large number of federal judges in the South resigned rather than face impeachment."

Inside the Supreme Court

Wagner, the great German composer, who could tell us in music what the bottom of the Rhine was like, might be able to describe what goes on today inside the equally inaccessible Supreme Court as regards its desegregation decision of 1954 and the following one of 1955 which indicated a somewhat nervous will to be left alone.

Last Monday the court refused to review lower court orders directing desegregation of schools in Charlottesville and Arlington County, Virginia. Although this was in effect a decision for integration, the court on the same day denied a hearing for immediate admission of Negroes in Old Fort, N. C., declaring that all administrative remedies provided by North Carolina's Pupil Enrollment Act had not been used.

The practical effect of these three decisions was a refusal to make any decisions. This may be an attitude within the tradition and usage of the court, but in view of the three new members and of much that has transpired since 1954 in argument and reaction against the desegregation decision, it is possible to wonder if the court has gone through some sea-changes in its majority thinking which make it, to say the least, uncomfortable.

Dred Scott and Segregation

Discussion of the Dred Scott decision in connection with its recent centennial has raised a question as to whether that action of the Supreme Court in 1857 was not similar to the school desegregation cases decided in 1954 and 1955. We fail to see any similarity, except that both dealt with delicate racial problems. On the other hand many contrasts between the two cases are striking.

In the Dred Scott case the Court violated one of its own cardinal rules by deciding a constitutional issue—the right of Congress to control slavery in the territories—that was not essential to proper disposition of the case. The judges themselves first agreed to render a decision without reference to the constitutionality of the Missouri Compromise Act. The majority changed their minds only be-

cause the dissenters insisted on expressing their view that the compromise act, then repealed, had been valid. Much of the criticism directed at the Court resulted from this unnecessary venture into an inflammatory political controversy.

In the desegregation cases the constitutional issue of whether Negro children were entitled to admittance to formerly all-white schools was directly before the Court. It had to be decided one way or the other. In concluding that segregation would have to go, the Court did not strike down any act of Congress, although it did upset its own previous decision that separate but equal school facilities would satisfy the requirement of equal protection of the law contained in the Fourteenth Amendment.

The most significant differences between the two decisions lies in the fact that in 1857 the Court ran counter to the trends of history and to the spirit and letter of the Constitution (which is grounded in human liberty and gives Congress full control over the territories). The 1954 and 1955 decisions, in this newspaper's opinion, are in full accord with the spirit and letter of the Constitution and with the trends of history. It is sometimes said that the Justices invoked social theory rather than law to upset segregation, but that is a distortion of what the Court said. Its ruling rests squarely on the equal protection clause, and the Justices unanimously abandoned the separate-but-equal formula only because experience had shown that schools segregated on racial lines were not and could not be equal.

One other contrast is worthy of note. In 1857 the Court arbitrarily asserted its power in a way that inflamed a national quarrel. In 1955 it understandingly ordered the integration of schools in accord with local conditions and left each separate situation to be judged by Federal Courts in the area. Tempers and questions have undeniably flamed nevertheless, and time will be required to obtain full compliance. But there seems to us no possibility that the country will overrule the Court or that the desegregation cases will be counted among the Court's "self-inflicted wounds."

Court Upholds Pool, Cafeteria Integration

Daily World Atlanta, Ga. P.1
Tues. 4-2-57

WASHINGTON — Pleas for continued segregation lost what was considered final ground yesterday, and efforts to bring return to lawful race separation in a Southern swimming pool and beach and to ouster Negroes from a cafeteria were unhonored by this nation's highest tribunal.

The United States Supreme Court Monday refused to upset lower court decisions as had been asked for by prosegregationist forces, which have continuosly sought to gain reversial of each decision which calls for racial equality. Specifically, the high court:

1. Rejected an appeal by the all white government of St. Petersburg, Fla., from an order which requires that Negro be admitted to the city pool and beach.

2. Rejected an appeal by Harris County, Texas from an order requiring admission of colored people to the county courthouse cafeteria in Houston.

The actions made final rulings by the Fifth U. S. Circuit Court of Appeals last December. And although, Southern forces still were not satisfied, the actions left open a policy of leaving decisions up to the lower courts.

In St. Petersburg Negroes, like in many Dixie towns, suffered from open inequality of public facilities which the city had made no move to make equal before the high court's recent historic decisions began.

In Houston, the decision only made it possible for tax payers, regardless of race to be able to eat when doing business on public property.

In both issues minorities held that segregation deprived them of equal protection of the laws as guaranteed by the 14th Amendment to the Constitution. Both cases were won on the same grounds that the high court outlawed segregation in public schools, May 17, 1954.

The Florida case was defended by Southerners who held that "under the present social system, Operation on a non segregated basis would result in closing of the pool and beach for lack of revenue and deprive the citizens of the city of this facility," southern officals pleaded.

The principal contention of Harris County in the appeal was that the trial court lacked jurisdiction to compel it, as an instrumentality of the state, to take "over positive action" under the 14th Amendment to prevent acts of discrimination committed by a lesse in the conduct of his private business. The Houston cafeteria had been turned over to a private individual after integration was sought.

WARNS THOSE WHO WOULD DISCREDIT HIGH TRIBUNAL

World Bkhm, Fla.
Wed. 4-17-57 P. 1

NEW YORK — (INS) — Attorney General Herbert Brownell, Jr. said Friday night he believes the Supreme Court's school desegregation decision "will stand the test of time."

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He concluded: "The independence of the supreme court will be secure only so long as it is sustained by the confidence of the public and the bar. And so long as the supreme court is independent, the people may be assured of equal justice under law."

Two New Justices

Ajro-American P. 4
Balt. 4-6-57

Charles Evans Whittaker was sworn in Tuesday as an associate justice of the United States Supreme Court.

He took oaths to support the Constitution and to administer justice without respect to persons and dispense equal rights to the poor and to the rich. Baltimore, Md.

Previously the Senate had confirmed William Joseph Brennan Jr. as an associate justice.

He had been given an interim appointment by President Eisenhower.

The AFRO is happy to greet both of these new members of our highest tribunal.

To the Supreme Court, more than to the President or the Congress, goes credit for most of the progress we have made in recent years in our march toward freedom.

It was the court which removed the white primary barrier to our right to vote.

It was the court which ripped out the legal support of the racial restrictive covenant.

It was the court which killed the jim crow railroad car, which affirmed the right to serve on juries, which delivered the death blow to segregated schools, parks, beaches and tax-supported recreation facilities.

It is because the judiciary has carried us further toward equality of citizenship than either the legislative or the executive that the action of the Supreme Court will be watched with hope that freedom for all will increase rather than decrease during the administration of the two new justices.

High Court Bars Racial Bias in Union Affairs

WASHINGTON, Nov. 18 (INS). —The Supreme Court ruled in a sweeping decision today that a labor union cannot legally discriminate against its members on the basis of race.

The court said this no-discrimination policy must cover everything from wage bargaining to the day-to-day protection of employe rights.

In a unanimous opinion written by Justice Hugo Black, the court upheld a group of Negro railroad workers in their attempts to block alleged discrimination by leaders of an all-white union.

ALL-NEGRO UNION

The case was brought to the high court by members of an all-Negro local of the Brotherhood of Railway and Steamship Clerks, employed at Houston, Tex., by the Texas and New Orleans Railroad.

The men charged that the company "purported to abolish" 45 jobs held by Negroes in May 1954, but subsequently put white employes in their place.

It was charged that despite repeated pleas by the Negroes, the union, "acting according to plan, did nothing to protect them against these discriminatory discharges and refused to give them protection comparable to that given white employes."

VIOLATED RAIL ACT

Summoning up the complaint, the court said it was alleged that "the union had failed in general to represent Negro employes equally and in good faith" and that this was a violation of the Railroad Labor Act.

If the allegations are proved, the court said, "there has been a manifest breach of the union's statutory duty to represent fairly and without hostile discrimination all of the employes in the bargaining unit."

The Negroes are asking $75,000 in damages and an injunction prohibiting racial discrimination by the union, including separate white and Negro locals. Lower courts ruled that the matter had to be taken up with the National Railroad Adjusment Board.

RULING IN ERROR

The justices said today this finding was in error, and sent the case back to the original Texas federal court for "further proceedings not inconsistent with this opinion."

In other actions, the court:

1. Gave five Gulf Coast States —Louisiana, Texas, Mississippi, Alabama and Florida—45 days to reply to a new Justice Department effort to fix the off-shore State boundaries at the historic three-mile limit.

2. Ordered the Federal District Court in New Orleans to consider the appeals of two Negroes, Clifton Alton Peret and Edgar Labat, now under the death sentence for attacking a white woman in 1950. The high court continued its stay of execution, pending the lower court's disposition of the case.

3. Dismissed a challenge of the constitutionality of Illinois' 2½ percent sales tax on the purchase of retail goods.

RR Negroes Win Suit

WASHINGTON —(UP)— The Supreme Court has struck another blow at what it calls "invidious discrimination" by railroad unions against Negro members.

The nine-judge bench said again what it began saying in 1947: That a railway labor union is obligated to represent all workers fairly without regard to race. If a Negro worker suffers discrimination he may take his complaint to a federal court.

The ruling stemmed from a law suit filed by Negro workers in the Houston, Tex., freight house of the Texas & New Orleans Railroad.

They said the Brotherhood of Railway Clerks did nothing to help them when their jobs were abolished and whites hired as replacements.

They Must Be Apart Of Compact

Decision Came On All-Negro Appeal To The High Court

WASHINGTON. — (INS) — The Supreme court ruled Monday that an all-white union cannot discriminate against Negro workers in negotiating agreements with an employer or in protecting job rights.

The court's unanimous opinion held illegal any "discriminatory" actions taken against members of a bargaining unit because of race or other grounds.

The decision came on the appeal of members of an all-Negro local of the Brotherhood of Railway and Steamship clerks, employees of the Texas and New Orleans railroad at Houston.

They contended that the railroad, in 1954, "abolished' some 45 jobs held by Negroes, and that in most cases similar jobs were subsequently given to white union members.

The High Court noted the complaint that the all-white union leadership "had failed in general to represent employes equally and in good faith" and that this was a violation of the Railway Labor Act.

The Negro employes asked lower courts for $75,000 in damages and injunctions ending separate Negro and white locals, and alleged discriminatory practices by the white union leadership.

The suit was filed against Pat J. Gibson, general chairman of Locals 6051 and 28 of the Brotherhood, and others. However, the lower courts ruled that they had no jurisdiction in such cases, and the Negroes appealed.

The Supreme court said Monday that the lower courts were in error when they dismissed the complaint for lack of jurisdiction. The justices noted on the broader issue:

"Here, the complaint alleged, in part, that petitioners were discharged wrongfully by the railroad, and that the union, acting according to plan, refused to protect their jobs as it did those of white employes or to help them with their grievances all because they were Negroes.

"If these allegations are proven, there has been a manifest breach of the union's statutory duty to represent fairly and without hostile discrimination all of the employes in the bargaining unit."

High court orders RR case retried

WASHINGTON (NNPA)—The Supreme Court ruled Monday that colored railroad workers may take to Federal court their grievances against railroad unions which unfairly discriminate against them as their collective bargaining agent.

"This court has emphatically and repeatedly ruled that an exclusive bargaining agent under the Railway Labor Act is obligated to represent all employees in the bargaining unit fairly and without discrimination because of race and has held that the courts have power to protect employees against such invidious discrimination," the high court held.

The unanimous decision reversed the Federal District Court at Houston, Texas, and sent the case back to that court for further proceedings not inconsistent with the opinion.

* * *

THE DISTRICT COURT had dismissed the class suit brought by four employees of the Houston freight house of the Texas and New Orleans Railroad Co. — J. D. Conley, Stanley Moore Sr., George L. Carter and B. A. Watson.

The four men, members of the Brotherhood of Railway and Steamship Clerks, sued on behalf of themselves and other colored employees similarly situated. The defendants in the case were the Brotherhood, its local union No. 28 and certain officers of both.

The craft represented by the Brotherhood is composed of both colored and white employees.

A union shop agreement existed between the railroad and the Brotherhood, requiring all members of the craft or class to be members of the Brotherhood as a condition of continued employment.

* * *

THE BROTHERHOOD has two lodges in Houston. Local 28 is composed solely of white employees, and Local 6051 solely of colored employees. The Brotherhood carried on its collective bargaining with the railroad through the white local.

The complaint alleged that the union had failed in general to represent colored employees equally and in good faith. It charged that such discrimination constituted a violation of the colored members' rights under the Railway Labor Act to fair representation from their bargaining agent.

The District Court granted a motion to dismiss the suit, holding that Congress had given the Adjustment Board exclusive jurisdiction over the controversy. The U.S. Court of Appeals at New Orleans affirmed.

But the Railway Labor Act applies only to "disputes between an employee or group of employees and a carrier or carriers," Justice Black said, adding:

"This case involves no dispute between employee and employer but to the contrary is a suit by employees against the bargaining agent to enforce their statutory right not to be unfairly discriminated against by it in bargaining."

Negro Union Is Upheld In Job Bias Decision

By HOWARD L. DUTKIN

The Supreme Court has held that a railroad union has a legal duty to represent employes without discrimination as to race or color.

In reversing a Texas District Court ruling yesterday the Supreme Court held that the lower court had jurisdiction in the case involving alleged discrimination against Negro members of a Texas local of the Brotherhood of Railway and Steamship Clerks.

The District Court and, later, the Court of Appeals for the Fifth Circuit, held that the Railway Labor Act conferred exclusive jurisdiction on the Railway Adjustment Board because the case involved interpretation of a collective bargaining agreement.

Thus, a suit by a group of Negro union members asking that the union be compelled to represent them fairly was dismissed for lack of jurisdiction. Today, the Supreme Court reversed this decision and remanded the case to the District Court for further proceedings.

Negro members of the brotherhood, employed at the Houston (Tex.) freight house, had complained they were obliged to belong to a segregated local while the white local acted as bargaining agent for both groups.

The Texas & New Orleans Railroad said it was abolishing 45 jobs, all held by Negroes. The jobholders were either discharged or demoted.

The Negroes complained the jobs were not actually eliminated but were filled by whites instead, except in a few instances.

The complainants said the union did nothing to protect them against the alleged discriminatory discharges. They sought job reinstatement.

"This case involves no dispute between employe and employer but to the contrary is a suit by employes against the bargaining agent to enforce their statutory right not to be

unfairly discriminated against by it in bargaining," the Supreme Court said in a ruling read by Justice Black.

The court declared that the adjustment board has no power to protect the complainants against such discrimination.

12d 1957

SUPREME COURT

NEGRO WORKERS WHO CHARGED THAT A LABOR UNION HAD DISCRIMINATED AGAINST THEM HAD THE RIGHT TO A TRIAL IN A FEDERAL DISTRICT COURT

COURT REINSTATES UNION BIAS TRIAL

High Bench Holds Negroes' Suit Over Loss of Rail Jobs Must Be Heard

By LUTHER A. HUSTON

Special to The New York Times.

WASHINGTON, Nov. 18 — The Supreme Court ruled unanimously today that Negro workers who charged that a labor union had discriminated against them had the right to a trial in a Federal District Court.

A district court in Texas erred, the high court said, in dismissing the Negroes' complaint. The lower court refused to hear the suit on the ground that under the Railway Labor Act the National Railroad Adjustment Board had exclusive jurisdiction over the controversy.

The effect of the Supreme Court's decision is that the district court must try the case on its merits.

J. D. Conley, Stanley Moore Sr., George L. Carter and B. A. Watson brought suit, on behalf of themselves and other Negro employes, similarly situated, against the Brotherhood of Railway and Steamship Clerks, Local 28.

They are employes of the Texas and New Orleans Railroad at Houston, Tex., and the all-white union had a contract with the railroad that made it the collective bargaining unit for employes in the categories to which the Negroes belonged.

In May, 1954, the railroad notified forty-five Negroes that the jobs they held were being abolished. All were either discharged or demoted.

Justice Hugo L. Black, who wrote the Supreme Court's opinion, said that "in truth the forty-five jobs were not abolished at all but instead filled by whites as the Negroes were ousted, except for a few instances where Negroes were rehired to fill their old jobs but with loss of seniority."

The Negroes who brought the suit contended that the Railway Labor Act required the local union, as the collective bargaining agent, to protect them against discriminatory practices. Their complaint charged that the union had failed to represent Negro employes equally and in good faith.

Their suit asked injunctive relief and $75,000 damages.

Judge T. M. Kennerly, in the district court at Houston, dismissed the complaint, supporting the union's contention that the Federal courts were not charged with the duty of policing the performance of collective bargaining agreements negotiated under the Railway Labor Act.

Justice Black said:

"This court has emphatically and repeatedly ruled that an exclusive bargaining agent under the Railway Labor Act is obligated to represent all employes in the bargaining unit fairly and without discrimination because of race and has held that the courts have power to protect employes against such invidious discrimination."

Vital Cases on Tap as Court Begins Its 167th Year Today

This is the first of two articles on the opening of the 167th term of the Supreme Court.

By Robert C. Donovan
N. Y. Herald Tribune News Service

Moments before noon Monday nine men of dignity will honor an old custom of shaking hands with each other—36 handshakes in all—after which they will pass in threes into a large marble chamber.

Their entrance will be heralded with a cry: "The honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States."

The audience will rise as the justices in black robes walk to their comfortable leather chairs at the high mahogany bench.

"Oyez! oyez! oyez!" the crier will intone. "All persons having business before the honorable, the Supreme Court of the United States, are admonished to draw near and give their attention, for the Court is now sitting. God save the United States and this honorable Court!"

Begins 167th Year

Thereupon the Supreme Court will begin its 167th year of work — a year that may bring decisions of great importance, not only in the turbulent field of civil liberties, but perhaps also, in consequence of Little Rock, in the matter of states' rights.

Once again racial segregation cases and litigation involving a wide spectrum of questions about an individual's rights under Federal and state anti-subversion laws hold the center of interest.

Because of the recent wave of these cases, the Supreme Court has been passing through one of the momentous periods of history. The trend of its decisions in the past three years has aroused more controversy than has thundered about the Court since the outlawing of New Deal legislation in the 1930s. Indeed, the Court has been subject to such violent criticism in and out of Congress that some of the most eminent members of the American Bar have begun asking whether the tribunal's authority is not in danger of being undermined.

Yet there is no end in sight to the kind of cases that have kindled this controversy. Here, for example, are some of the questions which the Court either has under advisement or which it has been asked to take under advisement in the 1957-'58 term:

- Is the attorney general's list of subversive organizations constitutional?
- Can a Negro student be denied admission to the University of Florida Law School?
- Was John Kasper, racist agitator, wrongfully convicted of contempt last year for obstructing school integration in Clinton, Tenn.? Or did this conviction, as he protests, violate his constitutional right of free speech?
- Has the constitutional right of religious freedom been denied certain churches in California which have not been granted tax exemption because they would not sign a loyalty statement required by state law?
- Is the section of the Internal Security Act of 1950 providing for deportation of aliens who have in the past been members of the Communist Party constitutional?
- Is the Norfolk, Va., pupil-assignment plan consistent with the Supreme Court's historic ruling on racial segregation in the public schools?
- Are Chicago's movie censorship regulations, under which the French film "The Game of Love," was banned constitutional?
- Can a Federal official commit libel in press conference or in an official news release? Or are such media privileged?
- Was Morton Sobell, convicted atomic spy, lawfully arrested? Or was he, as he contends, kidnaped in Mexico by agents of the Federal Bureau of Investigation, in violation of the United States-Mexican extradition treaty?
- Is the "membership clause" of the Smith Act constitutional? (This makes membership in any organization advocating violent overthrow of the Government illegal for one who is aware of the subversive aims of the organization and proposes to help achieve these aims. The Court has upheld the constitutionality of various other parts of the Smith Act, but has never passed upon this clause.)

One of the celebrated decisions of the last term—the Watkins case—may well bring in a series of similar cases at the new term.

John Watkins, former official of the Farm Equipment Workers Union, who had cooperated with the Communists in the 1940s without having been one, had been convicted of contempt for refusing to identify former Communists for the House Un-American Activities Committee. In a 6 to 1 decision, the Court set aside the conviction. Chief Justice Ear Warren wrote the opinion and in doing so read the riot act to congressional investigators for overstepping their limits. The Un-American Activities Committee, he held for the majority, had conducted its hearing in such a way that Mr. Watkins' constitutional rights had been violated.

Before this decision many persons had been convicted for contempt of Congress in more or less similar circumstances, and they are expected to descend upon the Court asking that their convictions be set aside under the Watkins ruling.

4 Named by Ike

Because of the nature of the major cases in recent years, decisions of the Supreme Court have been exerting a great and often a direct impact on the lives of the American people. Indeed some observers, noting the conservative character of the Eisenhower Administration and its distaste for innovation, believe that the Court, more than any other branch of the Government, has been shaping events at home. They point to the school segregation case as the classic example.

Of the nine members of the present Court, four were appointed by President Eisenhower, and in view of the ages of some of the other justices, it seems likely that he will make further appointments during his remaining three-and-a-half years in office.

Certain of last year's rulings aroused little enthusiasm in Mr. Eisenhower, and this is ironical because justices he had named played a crucial role in some of these decisions. Often in the past, too, judges have followed a different path on the Supreme Court than the President who appointed them in all probability anticipated.

In the last year particularly, justices appointed by the conservative Mr. Eisenhower have often teamed with colleagues appointed by the late President Franklin D. Roosevelt to form a liberal majority.

Mr. Eisenhower is not the only recent victim of this trick of history. Former President Harry S Truman has lived to see his appointee, Associate Justice Tom Clark, emerge as perhaps the most conservative member of the Court.

The current potential liberal majority is built around Chief Justice Warren and Justice William J. Brennan Jr. (Eisenhower appointees) and Justices Hugo L. Black and William O. Douglas (Roosevelt appointees) — a quartet often supported by Justices John M. Harlan (an Eisenhower appointee) and Felix Frankfurter (a Roosevelt appointee).

Mr. Eisenhower's most recent appointee, Associate Justice Charles C. Whittaker, has not been on the Court long enough to demonstrate where he stands in the line-up.

OYEZ! OYEZ!

As the Supreme Court of the United States opens its fall session tomorrow its members may think back to the Supreme Court of the early Republic, which for its first three sessions had no cases at all, and which was so unimportant that one of its original members, John Rutledge of North Carolina, who never attended a session, resigned to head the judicial system of his own state.

The members of the court may also reflect on the slow evolution by which this tribunal, its functions not clearly defined in the Constitution, has gathered strength to strike down acts of Congress and laws and policies of the states. There is no one so poor or so humble, of whatever race or religion, that his case may not come before the high court. Though the court cannot enforce, it can order other agencies to conform to its will. If a member of the airborne infantry of the United States or a private in the duly federalized Arkansas militia sees to it that no Negro boy or girl is hurt or threatened in the corridors of the Central High School in Little Rock, Ark., this is because the court decided, May 17, 1954, that the "separate but equal" doctrine was unjust and unconstitutional.

The court has not always been right. It was not right, we now conclude, in the Dred Scott decision, rendered in 1856 and reversed by five frightful years of Civil War at the cost of a million lives. It is never right for those who lose by its decisions. Some of those who applauded it when it struck down New Deal legislation during the Administrations of President Roosevelt were ready to damn it when it supported the minimum wage and other welfare legislation. Some fanatical segregationists have been suggesting that impeachment of the entire court would be a fitting revenge for the integration decision of 1954.

But the court survives, and will survive. President Jackson could say "John Marshall has made his decision—now let him enforce it." President Eisenhower's version is that "a final order of a Federal court * * * must be obeyed by state authorities and all citizens as the law of the land," and that the Administration is "obliged to use whatever means may be required by the particular situation."

The court has an appalling power. Yet this power is no more than what the whole nation, in a judgment wiser than any individual can make, desires it to have. As with the Presidency, as with Congress, so with the court, the power and the glory reside within the people.

Court Studies Firing Rights Of President

By Richard L. Lyons
Staff Reporter

The old question of the extent of the President's power to fire the people he hires came before the Supreme Court again yesterday.

The Court held in 1926 that the President could at his discretion fire any executive branch official appointed by the President. Nine years later it backtracked by saying that where Congress had specified causes for removal of members of a quasi-judicial or quasi-legislative agency the President could remove a member only for one of the causes listed.

Yesterday's case dealt with the shadowy area left in the middle by those two decisions. It involved a member of the War Claims Commission which a lower court had held was a quasi-judicial-legislative agency but for which Congress had laid down no causes for cases for removal.

The question put to the Court: In such a case does the silence of Congress mean the President has no power or unlimited power to fire the official?

In its brief, the Justice Department indicated it considers this one of the most important cases before the Court this year. During argument yesterday Justice Felix Frankfurter asked why. Solicitor General J. Lee Rankin replied in general terms that the President must have power to

select personnel if he is to perform adequately his Constitutional assignment of executing the laws.

I. H. Wachtel, attorney for the ousted commission member, Myron Wiener, said the case was important for this reason: If the President can fire Wiener he can also fire at will members of the Securities and Exchange Commission, Federal Power Commission, Federal Communications Commission and the Tariff Commission. Congress was also silent on cause for removal of members of these quasi-judicial quasi-legislative agencies, he said.

If members of those agencies can be fired at the pleasure of the President, they will be hard put to render the independent judgments their jobs call for, said Wachtel. The Government said these agencies mentioned by Wachtel shouldn't be affected by the Wiener case. But it did not argue this point in detail.

Wiener was appointed to the War Claims Commission by President Truman in 1950. Soon after President Eisenhower took office, he removed Wiener saying he wanted to finish the Commission's job with "personnel of my own selection."

Wiener said the President had no power to fire him and went to court to get his job back. The District Court here ruled against him. While he was appealing, the Commission was reorganized out of existence. With no job to get back, Wiener switched to the Court of Claims and sued for $8254 in back pay.

The Court of Claims ruled that he held a quasi-judicial, quasi-legislative job. But it ruled against him on grounds that Congress simply could not have intended that the President should have no power at all to remove Wiener.

Under Wiener's argument, it said, the only way to remove a member of the Commission —even for the best of reasons —would be through the cumbersome process of impeachment by Congress. Wachtel agreed yesterday that as the law stands impeachment was the only way to get rid of Wiener.

No further arguments were scheduled by the Court. A decision will be handed down later.

THE BASIC DOCUMENT

Two Supreme Court decisions stand at the core of the current controversy over integration in the public schools of the South. The first was on May 17, 1954. This reversed a decision of 1896 and declared that segregation of school children by race was unconstitutional. In so holding, the court set a precedent by relying chiefly upon present sociological and psychological aspects of the problem. Excerpts from the first decision follow:

MAY 17, 1954

Our decision * * * cannot turn on merely a comparison of * * * tangible factors in the Negro and white schools involved in each of the cases. We must look instead to the effect of segregation itself on public education.

In approaching this problem, we cannot turn the clock back to 1868 when the amendment [the Fourteenth] was adopted, or even to 1896, when Plessy v. Ferguson [the case which produced the "separate but equal" doctrine] was adopted. We must consider public education in the light of its full development and its present place in American life * * *. Only in this way can it be determined if segregation in public schools deprives these plaintiffs of the equal protection of the laws.

Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education in our democratic society. * * *

In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.

We come then to the question presented: Does segregation of children in public schools solely on the basis of race, even though the physical facilities and other "tangible" factors may be equal, deprive the children of the minority group of equal educational opportunities? We believe that it does. * * *

* * * To separate them from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone.

"A sense of inferiority affects the motivation of a child to learn. Segregation with the sanction of the law, therefore, has a tendency to retard the educational and mental development of Negro children and to deprive them of some of the benefits they would receive in a racially integrated school system."

Whatever may have been the extent of psychological knowledge at the time of Plessy v. Ferguson, this finding is amply supported by modern authority. Any language in Plessy v. Ferguson contrary to this finding is rejected.

We conclude that in the field of public education the doctrine of "separate but equal" has no place. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiffs * * * are, by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment.

* * *

A year after its 1954 decision on segregation, on May 31, 1955, the Supreme Court, in another ruling, decreed the pace and method for compliance with it. This took note of "varied local school problems," put upon school authorities the primary responsibility for solving them, and called for a "prompt and reasonable start" toward compliance. It left to Federal district courts the steps necessary to assure admittance of students to public schools on a nondiscriminatory basis "with all deliberate speed."

DECISION OF COURT ON TRYING GIRARD

Agreement With Japan Is Cited In Statement

JURISDICTION IS PLACED

By The Associated Press

WASHINGTON, July 11.—Following is the text of the Supreme Court's "per curiam" opinion Thursday upholding the United States Government's decision to turn over to Japan for trial GI William S. Girard:

Japan and the United States became involved in a controversy whether the respondent Girard should be tried by a Japanese court for causing the death of a Japanese woman. The basis for the dispute between the two governments fully appears in the affidavit of Robert Dechert, general counsel of the Department of Defense, an exhibit to a Government motion in the court below, and the joint statement of Secretary of State John Foster Dulles and Secretary of Defense Charles E. Wilson, printed as appendices to this opinion.

Girard, a specialist third class in the United States Army, was engaged on Jan. 30, 1957, with members of his cavalry regiment in a small unit exercise at Camp Weir Range Area, Japan. Japanese civilians were present in the area, retrieving expended cartridge cases. Girard and another specialist third class were ordered to guard a machinegun and some items of clothing that had been left nearby. Girard had a grenade launcher on his rife. He placed and expended 30-caliber cartridge case in the grenade launcher and projected it by firing a blank. The expended cartridge case penetrated the back of a Japanese woman gathering expended cartridge cases and caused her death.

Sought Habeas Corpus

The United States utimately notified Japan that Girard would be delivered to the Japanese authorities for trial. Thereafter, Japan indicted him for causing death by wounding. Girard sought a writ of habeas corpus in the District Court for the District of Columbia. The writ was denied, but Girard was granted declaratory relief and an injunction against his delivery to the Japanese authorities. — F. Supp. —. The petitioners appealed to the Court of Appeals for the District of Columbia, and, without awaiting action by that court on the appeal, invoked the jurisdiction of this court under 28 U.S.C. SEC. 1254 (1). Girard filed a cross-petition for certiorari to review the denial of the writ of habeas corpus. We granted both petitions. Supreme Court Rule 20; 353 U.S.

A security treaty between Japan and the United States, signed Sept. 8, 1951, was ratified by the Senate on March 20, 1952, and proclaimed by the President effective April 28, 1952. Article III of the treaty authorized the making of administrative agreements between the two governments concerning "the conditions which shall govern the disposition of armed forces of the United States of America and in and about Japan . . ." Expressly acting under this provision, the two nations, on Feb. 28, 1952, signed an administrative agreement covering, among other matters, the jurisdiction of the United States over offenses committed in Japan by members of the United States armed forces, and providing that jurisdiction in any case might be waived by the United States. This agreement became effective on the same date as the security treaty (April 28, 1952) and was considered by the Senate before consent was given to the treaty.

Amended By Protocol

Article XVII, Paragraph 1 of the administrative agreement provided that upon the coming into effect of the "agreement between the parties to the North Atlantic Treaty regarding the status of their forces" signed June 19, 1951, the United States would conclude with Japan an agreement on criminal jurisdiction similar to the corresponding provisions of the NATO agreement. The NATO agreement became effective Aug. 23, 1953, and the United States and Japan signed on Sept. 29, 1953, effective Oct. 29, 1953, a protocol agreement pursuant to the covenant in Paragraph 1 of Article XVII.

Paragraph 3 of Article XVII as amended by the protocol dealt with criminal offenses in violation of the laws of both nations and provided:

"3. In cases where the right to exercise jurisdiction is concurrent the following rules shall apply:

"(A) The military authorities of the United States shall have the primary right to exercise jurisdiction over members of the United States armed forces or the civilian component in relation to

"(I) Offenses solely against the property or security of the United States, or offenses solely against the person or property of another member of the United States armed forces or the civilian component or of a dependent;

"(II) Offenses arising out of any act or omission done in the performance of official duty.

"(B) In the case of any other offense the authorities of Japan shall have the primary right to exercise jurisdiction.

"(C) If the state having the primary right decides not to exercise jurisdiction, it shall notify the authorities of the other state as soon as practicable. The authorities of the state having the primary right shall give sympathetic consideration to a request from the authorities of the other state for a waiver of its right in cases where that other state considers such waiver to be of particular importance."

Committee Established

Article XXVI of the administrative agreement established a joint committee of representatives of the United States and Japan to consult on all matters requiring mutual consultation regarding the implementation of the agreement; and provided that if the committee ". . . is unable to resolve any matter, it shall refer that matter to the respective governments for further consideration through appropriate channels."

In the light of the Senate's ratification of the security treaty after consideration of the administrative agreement, which had already been signed, and its subsequent ratification of the NATO agreement, with knowledge of the commitment to Japan under the administrative agreement, we are satisfied that the approval of Article III of the security treaty authorized the making of the administrative agreement and the subsequent protocol embodying the NATO agreement provisions governing jurisdiction to try criminal offenses.

The United States claimed the right to try Girard upon the ground that his act, as certified by his commanding officer, was "done in the performance of official duty" and therefore the United States had primary jurisdiction. Japan insisted that it had proof that Girard's action was without the scope of his official duty and therefore that Japan had the primary right to try him.

Unable To Agree

The joint committee, after prolonged deliberations, was unable to agree. The issue was referred to higher authority which authorized the United States representatives on the joint committee to notify the appropriate Japanese authorities, in accordance with Paragraph 3 (C) of the protocol, that the United States had decided not to exercise, but to waive, whatever jurisdiction it might have in the case. The secretary of state and the secretary of defense decided that this determination should be carried out. The President confirmed their joint conclusion.

A sovereign nation has exclusive jurisdiction to punish offenses against its laws committed within its borders, unless it expressly or impliedly consents to surrender its jurisdiction. Schooner Exchange vs. McFaddon, 7 Cranch 116, 136. Japan's cession to the United States of jurisdiction to try American military personnel for conduct constituting an offense against the laws of both countries was conditioned by the covenant of Article XVII, Section 3, Paragraph (C) of the protocol that:

". . . The authorities of the state having the primary right shall give sympathetic consideration to a request from the authorities of the other state for a waiver of its rights in cases where the other state considers such waiver to be of particular importance."

The issue for our decision is therefore narrowed to the question whether, upon the record before us, the Constitution or legislation subsequent to the security treaty prohibited the carrying out of this provision authorized by the treaty for waiver of the qualified jurisdiction granted by Japan. We find no constitutional or statutory barrier to the provision as applied here. In the absence of such encroachments, the wisdom of the arrangement is exclusively for the determination of the executive and legislative branches.

The judgment of the District Court in No. 1103 is reversed, and its judgment in No. 1108 is affirmed.

Mr. Justice Douglas took no part in the consideration or decision of this case.

William S. Girard

Foreign-Court-Trial Ban May Be Tied to Aid Bill

Courier-Journal P.1
Fri. 7-12-57
Louisville Ky.

Supreme Court Decision In Girard Case Causes Uproar In Congress; Threat of Action

From Wire Dispatches

Washington, July 11.—A House battle began shaping up tonight to add to President Eisenhower's new foreign-aid bill a prohibition against foreign court trials of United States servicemen.

12d

The move developed in the wake of the Supreme Court's decision in the case of GI William S. Girard. The court upheld the legality of a decision by U. S. officials to turn Girard over to the Japanese Government for trial on a manslaughter charge.

Representative Bow (R., Ohio) said he was studying Eisenhower's $3,242,333,000 foreign-aid measure "to see where an amendment might be offered." The aid bill was cleared by the Rules Committee today for House consideration starting Monday.

Bow Bill Adoption Predicted

Bow said the Supreme Court decision in the Girard case "makes it even more urgent" that Congress act on his resolution aimed at preventing the prosecution of U. S. servicemen in foreign courts.

Representative Hays (D., Ohio) predicted that Bow's resolution, which has been bottled up in the Rules Committee, "will be put on as an amendment" to the foreign-aid bill.

The resolution is opposed by the Administration, whose spokesmen contend its adoption would force the recall of U. S. forces from all parts of the world.

Ike Would Face Dilemma

If House and Senate should vote to incorporate it in the foreign aid bill, Eisenhower would be faced with the dilemma of having to accept it or veto the whole bill.

The Supreme Court decision on Girard brought these other repercussions:

1. Representative Ayres (R., Ohio) introduced a bill calling for a "full and complete" investigation of the Girard case.

2. Senator Thurmond (D., S. C.) said he would press for adoption of his resolution putting Congress on record as being opposed to the surrender of any U. S. servicemen to foreign courts for trial.

Courier-Journal P.16

3. Senator Holland (D., Fla.) predicted the Senate would give serious consideration to some form of the treaty-limiting amendment proposed by Senator Bricker (R., Ohio), particularly one that would prohibit executive agreements, not ratified by the Senate, from superseding "constitutional rights."

Special Committee Proposed

4. Representative Keating of New York, top G.O.P. member of the House Judiciary Committee, proposed that the House set up a special committee to study the whole problem of trying servicemen and their dependents for crimes committed overseas. He said he would introduce a resolution tomorrow to create such a committee.

Keating said "grave questions" had been raised by the Girard case and previous high court rulings that civilian dependents of servicemen overseas could not be tried by military courts-martial for capital crimes.

Administration Pleased

Administration spokesmen generally expressed satisfaction with the high-court decision, but many members of Congress were sharply critical.

Senator Ervin (D., N.C.) said, "I think the decision is wrong." Ervin contended that a recent study by an armed-services subcommittee on which he served showed that "we have no valid agreement with Japan on the matter."

Representative Gross (R., Iowa), commenting on the Supreme Court decision in a House speech, called it "another assault on the Constitution of the United States and an undermining of the rights of the individual."

Constitution Not Violated, It Declares

Courier-Journal
Fri. 7-12-57
Louisville Ky.

By The Associated Press

Washington, July 11.—The Supreme Court, in an 8-to-0 decision of great import, today cleared the way for Japan to try GI William S. Girard for manslaughter.

P.1

The tribunal ruled that the Administration violated no provision of the Constitution or laws when it waived any right to try Girard by United States Army court-martial and decided instead to turn him over to Japan.

The eight justices upheld the legality of the status-of-forces agreement between the United States and Japan.

Provides for Waivers

This pact gives the primary right to try American servicemen to the United States in some cases and to Japan in others.

It also provides that one nation shall give "sympathetic consideration" to waiving its right of the request from the other nation.

A story on France's refusal to turn over a GI to the Army for court-martial in a Paris slaying is on Page 3.

After a dispute with Japan as to who had the primary right in the Girard case, top-ranking American officials decided to allow Japan to try the soldier. This decision was approved by President Eisenhower.

The case involves the fatal shooting of a Japanese woman scavenging for scrap metal on a rifle range which American and Japan forces shared.

No Barrier Against it

The Supreme Court expressed no opinion on the wisdom of the waiver provision as applied in the Girard case.

It said merely that, since there is no constitutional or statutory barrier against it, "the wisdom of the arrangement is exclusively for the determination of the executive and legislative branches."

The decision was hailed as "good news" by the Japanese ambassador here, and in Japan, Girard was promised a "fair and fast trial."

Some In Congress Dissent

But in Congress there were renewed demands for action to scrap or change the status-of-forces pacts, which have been signed with about 50 nations. Representative Gross (R., Iowa) called the court decision "another assault on the Constitution of the United States."

A number of Southerners, angry over the Supreme Court decision in school-segregation and other cases, were quick to dissent from the Girard decision as well. Senator Russell (D., Ga.) said, "Girard has been cast in the role of a sacrificial lamb."

Defense Secretary Wilson issued a statement that the United States "will render every possible assistance to Girard and his counsel in the protection of his rights."

Courier-Journal

Wilson expressed confidence the Japanese trial "will be conducted with utmost fairness."

Wilson had previously said that if the status-of-forces pacts were canceled, the United States would have to pull its forces out of foreign lands and retire to a "fortress America."

P.16

The U. S.-Japanese agreement about servicemen's trials was entered into under a mutual-security treaty which became effective April 28, 1952.

One article of the treaty authorized the making of administrative agreements between the two countries concerning the "conditions which shall govern the disposition of the armed forces of the United States in and about Japan."

Warren Reads Decision

Chief Justice Earl Warren read today's decision in a clear, firm voice in a well-filled courtroom. It said the Senate ratified the security treaty after considering the administrative agreement, which had already been signed.

It further noted that the Senate subsequently ratified the North Atlantic Treaty Organization agreement, knowing that when the N.A.T.O. pact went into effect the United States and Japan planned to conclude another status-of-forces agreement similar to provisions in the N.A.T.O. document.

"We are satisfied," the court said, "that the approval of Article 3 of the security treaty authorized the making of the administrative agreement" and that the subsequent protocol embodying the N.A.T.O. agreement provisions had Senate approval.

'Issue Is Narrowed'

Here is the crux of the court's unsigned decision:

"The issue for our decision is therefore narrowed to the question whether, upon the record before us, the Constitution or legislation subsequent to the security treaty prohibited the carrying out of the provision authorized by the treaty for the waiver of the qualified jurisdiction granted by Japan (to the United States over its own forces).

"We find no constitutional or statutory barrier to the provision as applied here.

"In the absence of such encroachments, the wisdom of the arrangement is exclusively for the determination of the executive and legislative branches."

District Court Reversed

The decision reversed Federal District Judge Joseph C. McGarraghy, who ruled recently that the proposed delivery of Girard to Japan would violate his constitutional rights.

Only Justice William O. Douglas did not take part in the Girard case. He had left on a vacation abroad before the court heard arguments Monday.

The court made public today for the first time details of allegations that Girard induced the Japanese woman he is accused of slaying to come forward and pick up scrap metal, then shot her in the back.

The allegations are contained in a sworn statement by Robert Dechert, general counsel of the Defense Department, in a review of the Girard case.

Prejudicial Effect Feared

The affidavit was mentioned in proceedings both in the District Court and the Supreme Court. Government lawyers said it had not been made public because it would be prejudicial to Girard whether he was tried in Japanese courts or by an Army court-martial.

The Dechert affidavit was attached as an appendix to the court's decision. A footnote said, "As the court considers that the issues in the case should be decided on a fully disclosed record, the affidavit is ordered unsealed."

Girard, a 21-year-old Army specialist third class from Ottawa, Ill., is accused of fatally wounding Mrs. Naka Sakai January 30 by shooting her with an empty cartridge case fired from the grenade launcher of his rifle. Girard was on guard duty at the time.

Other Soldier Is Quoted

Specialist Third Class Victor N. Nickel was quoted as saying the woman and other Japanese were "just collecting the (discharged) cartridges, so there was no need of chasing them away."

In one statement, Dechert said, Nickel related that Girard told him to throw out empty cartridges.

"The purpose was to scare the Japanese off by firing over their heads when they came to pick up the cartridges," Nickel was quoted.

Nickel was further quoted as saying about six Japanese came down to pick up the cartridges. Nickel's statement concluded:

"He (Girard) stood up, carrying the gun, and went about 2 feet to my right. Japanese people started to run away, probably thinking they were being chased. . . . Then Girard fired, holding the gun at his hip."

Statement Changed

But later, Dechert said, Nickel asked that he be permitted to make a further statement.

This time Nickel related that Girard had asked him to gather some empty cartridge cases for the purpose of luring the Japanese closer to their position; that he and Girard were in a foxhole together, and that at Girard's request, in order to draw the Japanese closer, he—Nickel—threw empty cartridge cases from the foxhole.

Nickel was quoted as saying that Girard told him to "throw the brass a little closer" and that Girard motioned with his hands for the brass scavengers to come closer, and said, "Dai jobu," which meant for them to come nearer.

Says Girard Fired at Man

Nickel said in this statement that Girard fired at a Japanese man, then fired at the Japanese woman and hit her.

Nickel said Girard was in a standing position and fired from

the shoulder. But the witness quoted Girard as telling him to say, if questioned, that the weapon was fired from the waist and also that "we did not throw any brass."

The Dechert affidavit also contained a statement of the Japanese subcommittee on criminal jurisdiction of the joint U. S.-Japanese committee which considered the case.

Summarizing the case from the Japanese viewpoint, the subcommittee said Nickel threw unexpended cartridge cases and beckoned a Japanese man, Hidehara Onozeki, and Mrs. Sakai, and cried out the Japanese equivalent of "Old man, O.K., old lady, O.K."

Became Suspicious

The Japanese said Onozeki became suspicious of the behavior of Nickel and Girard, and tried to run away. At that point, the Japanese said, Girard fired a blank shot toward Onozeki, then placed an unexpended cartridge case in the launcher attached to his rifle.

When Girard saw Mrs. Sakai running off, the Japanese said, he held the stock of the rifle under his arm and, in a standing position, fired a blank shot toward her with an expended cartridge case.

As a result, the account said, "he made her sustain a penetrating wound on the left side of her back which proved fatal on the spot because of the loss of blood resulting from a cut in the main artery."

JAPAN GETS GIRARD TRIAL FOR SLAYING

Times-Picayune Fri. 7-12-57 P.1

U.S. High Court Clears Way by 8-0 Decision

New Orleans

By KARL E. BAUMAN

WASHINGTON, July 11 (AP)—The Supreme Court, in an 8-0 decision of far-reaching import, today cleared the way for Japan to try GI William S. Girard for manslaughter.

The high tribunal ruled that the Eisenhower administration violated no provision of the Constitution or laws when it waived any right to try Girard by U.S. Army court-martial and decided instead to turn him over to Japan.

The eight justices upheld the legality of the status-of-forces agreement between the United States and Japan. This pact gives the primary right to try American servicemen to the United States in some cases and to Japan in others. It also provides that one nation shall give "sympathetic consideration" to waiving its right on request from the other nation.

Eisenhower Approval Given

After a dispute with Japan as to who had the primary right in the Girard case, top-ranking American officials decided to allow Japan to try the soldier in connection with the fatal shooting of a Japanese woman scavenging for scrap metal on a rifle range which American and Japanese forces shared. This decision was approved by President Eisenhower.

The Supreme Court expressed no opinion as to the wisdom of the waiver provision as applied in the Girard case. It said merely that since there is no constitutional or statutory barrier against it, "the wisdom of the arrangement is exclusively for the determination of the executive and legislative branches."

The decision was hailed as "good news" by the Japanese ambassador here, and in Japan Girard was promised a "fair and fast trial."

'Role of Sacrificial Lamb'

But in Congress there were renewed demands for action to scrap or change the status-of-forces pacts which have been signed with about 50 nations. Rep. Gross (R-Iowa) called the court decision "another assault on the Constitution of the United States."

A number of Southerners angry over the Supreme Court decision in school segregation and other cases were quick to dissent from the Girard decision as well. Sen. Russell (D-Ga) said, "Girard has been cast in the role of a sacrificial lamb."

Secretary of Defense Wilson quickly issued a statement that the United States "will render every possible assistance to Girard and his counsel in the protection of his rights."

Wilson Sees Fairness

Wilson expressed confidence the Japanese trial "will be conducted with utmost fairness."

Wilson had previously said that if the status-of-forces pacts were cancelled, the United States would have to pull its forces out of foreign lands and retire to a "fortress America."

Times-Picayune

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Warren Reads Decision

Chief Justice Warren read today's decision in a clear, firm voice in a well-filled courtroom. It said that the Senate ratified the security treaty after considering the administrative agreement, which had already been signed.

It further noted that the Senate subsequently ratified the North Atlantic Treaty Organization agreement, knowing that when the NATO pact went into effect the United States and Japan planned to conclude another status-of-forces agreement similar to provisions in the NATO document.

"We are satisfied," the court said, "that the approval of Article 3 of the security treaty authorized the making of the administrative agreement" and that the subsequent protocol embodying the NATO agreement provisions had Senate approval.

Crux of Decision Noted

The crux of the court's unsigned decision:

"The issue for our decision is therefore narrowed to the question whether, upon the record before us, the Constitution or legislation subsequent to the security treaty prohibited the carrying out of the provision authorized by the treaty for the waiver of the qualified jurisdiction granted by Japan (to the United States over its own forces).

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Dechert Affidavit Cited

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—Associated Press WIREPHOTO.

APPEARING STUNNED after the U.S. supreme court's decision Thursday are Louis Girard and his wife, Shirley, at their Ottawa, Ill., home. Their son, Terry, 5, sits behind them. Louis, a garage mechanic, said, "I didn't know anything like this could go on in this country." The supreme court upheld the U.S. governments decision to turn his brother, Army Specialist 3/c William Girard, over to Japan for trial in the killing of a Japanese woman.

The Dechert affidavit was attached as an appendix to the court's decision. A footnote said: "As the court considers that the issues in the case should be decided on a fully disclosed record, the affidavit is ordered unsealed."

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Specialist 3.C. Victor N. Nickel was quoted as saying the woman and other Japanese were "just collecting the—discharged — cartridges, so there was no need of chasing them away."

Fatal Shooting Described

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"The purpose was to scare the Japanese off by firing over their heads when they came to pick up the cartridges," Nickel was quoted as saying.

Nickel was further quoted as saying that about six Japanese came down to pick up the cartridges. Nickel's statement concluded: "He—Girard — stood up carrying the gun, and went about two feet to my right. Japanese people started to run away, probably thinking they were being chased. . . Then Girard fired, holding the gun at his hip."

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Nickel Quotes Girard

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Beckoned to Scavengers

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12d 1957

SUPREME COURT

HOUSTON, TEXAS...CAFETERIA
ST.PETERSBURG, FLA.....SWIMMING POOL

Edict Also Hits Florida Case

Defender Chicago, Ill. 12d
Sat. 4-6-57 p.1

WASHINGTON — (INS) — The Supreme Court refused Monday to review lower court decisions ordering the Houston, Texas court house cafeteria to serve Negroes and admitting Negroes to a St. Petersburg, Fla., swimming pool.

The action left standing lower court orders striking down a leasing operator's segregation policy in the county court house dining room. It also overruled the St. Petersburg swimming pool's white-only rule.

In Houston, lower courts granted an injunction to restrain Harris county from renewing its present lease without getting assurances that Negroes will be served in the future.

District and Circuit courts held that the lessee, W. F. Derrington, was responsible for the acts of racial discrimination but the circuit court said that "Derrington stands in the place of the county: therefore Derrington's conduct is state action."

The Houston suit was brought late in 1955 by four Negroes who had been refused service in the cafeteria, located in the basement of the courthouse built in 1953.

In the swimming pool case, St. Petersburg's appeal contended the Florida city differed from Baltimore which was ordered several years ago to admit Negroes to pools, on grounds that St. Petersburg operates its pools in a "proprietary" rather than as a "governmental" function.

The Circuit court ruled that if the city's contention were accepted "the constitution would operate with different effect in Maryland and Florida, and probably also in other states."

Justices Back Lower Court Ruling

Call p.1
Fri. 4-5-57
Kansas City, Mo.

Supreme Court Refuses to Review Houston Case

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HIGH COURT BALKS INTEGRATION FOES

Times
Jue. 4-2-57

Rejects Texas and Florida Appeals in Cafeteria and Swimming Pool Cases

Newark, N. 4.

Special to The New York Times.

WASHINGTON, April 1—The Supreme Court rejected today appeals from judgments ordering desegregation at a Florida swimming pool and a Texas courthouse cafeteria. p. 35

Negroes had contended in both cases that segregation deprived them of equal protection of the laws as guaranteed by the Fourteenth Amendment to the Constitution. This was the ground on which the Supreme Court, in 1954, outlawed segregation in public schools.

St. Petersburg, Fla., sought a review of a lower court order enjoining segregation in a pool and beach operated by the municipality. The city contended that the Fourteenth Amendment was a prohibition of acts of states and was not applicable to a municipality acting in its private, or proprietary, capacity.

The pool was operated as a business, the city contended, and the fees charged for admission accrued to the municipal government.

"Under the present social system, operation on a non-segregated basis would result in closing of the pool and beach for lack of revenue and deprive the citizens of the city of this facility," the city asserted.

A pool maintained for Negroes in the same section of the city was closed for lack of revenue. The municipality said it could not afford to run the utility at a loss.

The Texas case involved a suit by Negroes to restrain the officials of Harris County from denying them equal use of a cafeteria in the courthouse basement. The county, which embraces Houston, leased the cafeteria to W. F. Derrington.

A Federal district court adjoined Mr. Derrington from refusing admission to Negroes and the county from renewing Mr. Derrington's lease or executing new leases without assurance that Negroes would be admitted on an equal basis with whites. The Court of Appeals affirmed the order.

Harris County's principal contention on appeal was that the trial court lacked jurisdiction to compel it, as an instrumentality of the state, to take "overt positive action" under the Fourteenth Amendment to prevent private discrimination committed by a lessee in the conduct of his private business.

"To give one man the right to mingle with another against the will of the latter is to deprive the latter of his right to mingle," the county also argued. "Protection of a minority, if carried to extremes, must result in a tyranny of the minority."

Both appeals were from judgments of the Court of Appeals in the Fifth Circuit, at New Orleans.

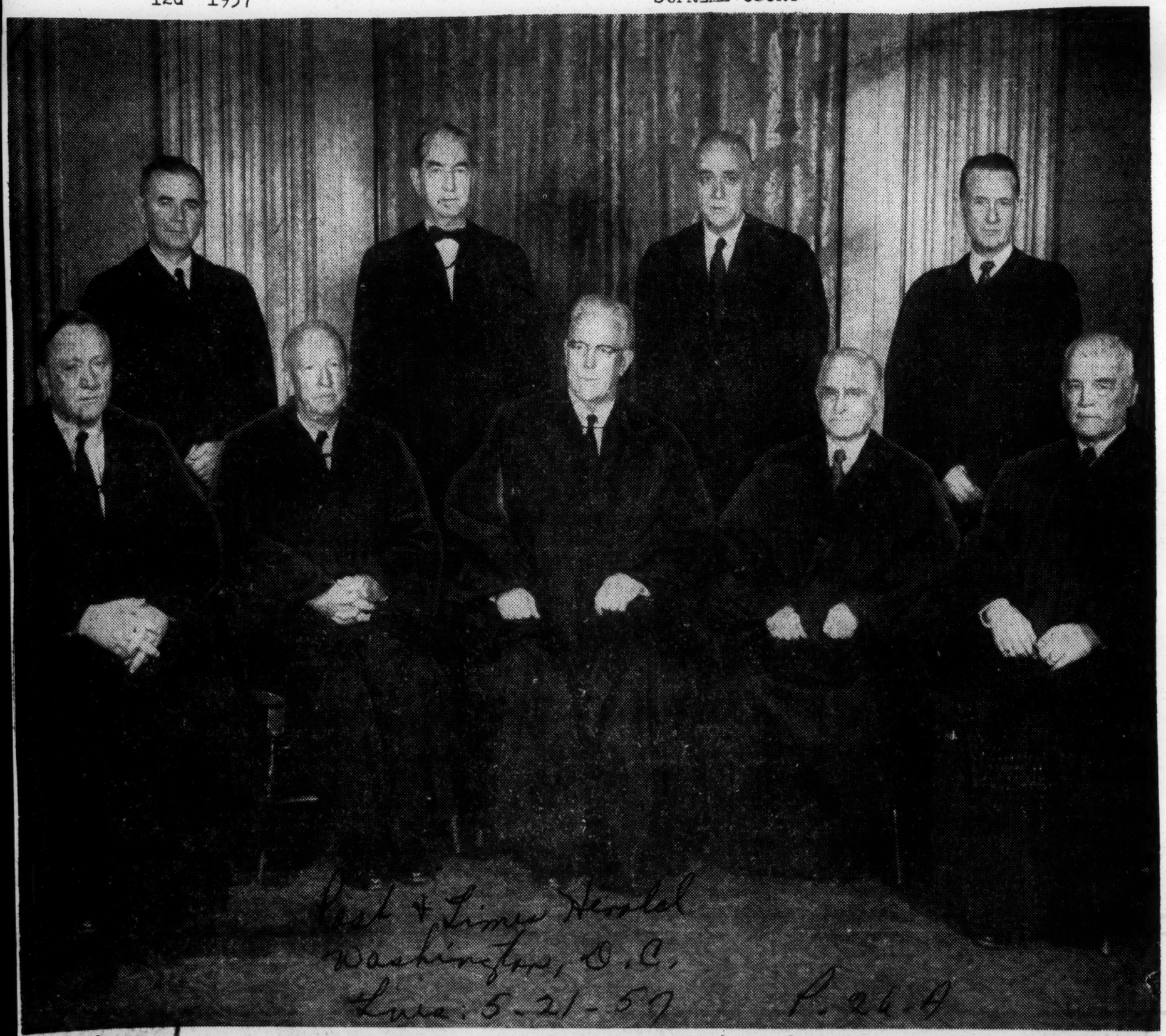
The Supreme Court's rejection was in a brief order that gave no reasons for its action. Since its ruling in the school cases the court has uniformly refused to hear appeals from subordinate court orders directing integration.

Court Orders Integration In Pool, Cafe

Advertiser
Jule. 4-2-57
Montgomery, Ala.

WASHINGTON, April 1 — The Supreme Court today ordered integration of a Florida swimming pool and a Texas cafeteria, gave private industry the right to develop Hells Canyon waterpower, and ruled the lockout legal in some labor disputes. p.1

In the Florida case, the court refused to review lower court orders that St. Petersburg admit Negroes to the city's Apa Pool and bathing beach. For Texas, the court ruled that Negroes be admitted to the Harris County Courthouse cafeteria.



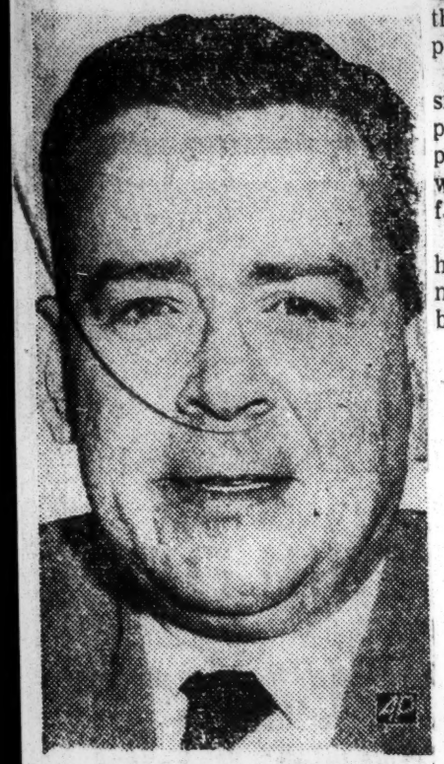
12d

United Press

The United States Supreme Court posed for a new formal portrait in Washington yesterday. Seated, left to right: William O. Douglas, Hugo L. Black, Chief Justice Earl Warren, Felix Frankfurter and Harold H. Burton. Standing: William J. Brennan Jr., Tom C. Clark, John M. Harlan and Charles E. Whittaker. Whittaker is the newest member of the Court.

Andrews Says Supreme Court More Feared Than Red Bombs

Advertiser Thurs. 5-23-57



CONGRESSMAN ANDREWS
Blasts Supreme Court

WASHINGTON, May 22 (AP)—Rep Andrews (D-Ala) said today he is afraid of the Supreme Court, adding: "I fear them (the Justices) far more than I fear the threat of an H-bomb from Russia."

In his weekly letter to constituents, Andrews explained:

"In the case of the Russian bomb, we know what might happen and can keep our Defense Department strong.

"In the case of the Supreme Court, we are helpless If the present trend continues this country might wake up to find itself destroyed from within—our very vitals ravaged and torn by a 'political cancer'—masking behind the sacred robes of our highest tribunal—the Supreme Court."

Many members of Congress, Andrews said, are quietly asking each other this question: "What has happened to the Supreme Court? What is behind their many left-wing actions? Have its members been brainwashed?"

How else, Andrews asked, "can you explain their recent decisions?

During the past 10 years, he said, "many cases have been decided in favor of the Communists. It looks as though there are two groups in this country who just cannot lose a case before the present Supreme Court—members of the NAACP (National Assn. for the Advancement of Colored People) and the Communists."

Andrews said it is common gossip here that Earl Warren was appointed Chief Justice after he promised Atty. Gen. Brownell he would push through a decision in favor of integration.

"If that rumor could be proved, he would be subject o impeachment," Andrews said, adding: "I believe he did it."

Supreme Court's Inevitable Answer On Desegregation

Courier-Journal
Wed. 5-22-57
Louisville Ky. P.

WHAT CONSTITUTES good-faith compliance with the Supreme Court's requirement of "orderly desegregation," in tax-supported schools, "with all deliberate speed"?

State and federal judges have given a variety of answers to that question in the 130-odd cases filed since 1954. But in virtually every case reaching the federal circuit courts or the Supreme Court itself, even when due allowances have been made for differing local circumstances, one clear principle has been maintained. The principle is that racial discrimination in itself is no justification for delay.

The Supreme Court has newly affirmed this principle by refusing to review a circuit court decision requiring the immediate admission of five Negro appellants to Memphis State College. Its action upholds the circuit court's ruling that Tennessee's stair-step plan for desegregating state colleges constituted, in the Memphis case, a limitation of enrollment "based on race or color"—even though all such limitations were scheduled for expiration in 1959. The five Negroes seeking admission as freshmen, the court held, were being placed "at the bottom of the list" of some thousand or so students annually threatening the first-year class with over-crowding.

The Court's action is not as much an ice-breaker as it might seem. Desegregation may be no more popular in Tennessee than farther South, but the process is already well along. According to the statisticians of the Southern Education Reporting Service, some 344 Negro pupils already are attending school with some 16,100 whites, Nashville's first-graders will begin an integration program this fall, and six of the state's seven tax-supported colleges already have policies under which Negroes are admissible at the graduate level and to the senior class at the undergraduate level.

In addition, four of Tennessee's private colleges, including Vanderbilt, Peabody, Scarritt and Maryville, have achieved some degree of desegregation. The parochial schools of Nashville have also dropped the color bar, and Tennessee State University, predominantly Negro, enrolled two white students last fall.

At the college level the people of Memphis may find reassurance in the fact that it is in this field that desegregation has been smoothest. The University of Kentucky and the University of Louisville are but two of 107 tax-supported institutions in 12 Southern and border states to find this true in recent years—as have scores of private or church-related institutions not under legal compulsion to desegregate. And there is considerable evidence that successful desegregation at college-level often has paved the way for similar smoothness in desegregation of public elementary and high school systems, a process for which the courts in general allow more time but the inevitability of which they leave no legal room to doubt.

Andrews Says Supreme Court More Feared Than Red Bombs

Advertiser Thurs. 5-23-57 P.1

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12d 1957

Justice Reed Retiring From Supreme Court

By Edward T. Foliard
Staff Reporter

Associate Justice Stanley F. Reed will retire Feb. 25, thus paving the way of President Eisenhower to make his fourth appointment to the United States Supreme Court.

Justice Reed, a 72-year-old Democrat with 19 years of service, told the President in a letter yesterday of his decision to retire from regular active service. Under a law that permits retirement at the age of 70 after 20 full years' service of 70 after 20 full years' service, he will continue to draw his full salary of $35,000 a year.

International News
STANLEY REED
. . . quits High Court post

'II'm retiring simply because I'm 72 years old," Justice Reed told reporters. "The strain of close concentration o important cases no longer seems wise . . . My judgmment and experience are not a substitute for a knowledge o f history, law and facts surrounding the myriad of particular issues presented."

Three Possibilities Only

As has happened every time there has been a High-Court vacancy in the Eisenhower Administration, three men were mentioned for t he vacant post in the early speculation—Secretary of State John Foster Dulles, Attorney General Herbert Brownell Jr., and Tohmas E. Dewey, former Governor of New York. None of them appeared to be a hot proospect.

Secretary Dulles loves his present job, and resident Eisenhower seems to think he comes close to being an indispensable man in the State Department.

Attorney General Brownell almost certainnly would run into trouble if his nomination came up in the Senate. Soome Democrats in that body would question his possessio of judicial temeperament. They were furious in 1953 when he charged that former President Truman promoated Harry Dexter White although knowing that the FBI had unmasked White as a Russian "spy."

Former Governor Dewey, who is now reported to be making more than $100,000 a year, has said repeatedly that he does not want to come to Washington to hold a Government post. Of course, he could change his mind; but thus far his friends have taken him at his word.

Politics and Geography

One well-posted Republican guessed yesterday that President Eisenhower, having chosen a Democrat the last time, might take both politics and geography into consideration this time, and choose as Justice Reed's succesor a Republican from the Midwest.

That section now has only one representative—Associate Justice Harold H. Burton, a Republican of Ohio, who was named by former President Truman.

President Eisenhower, in naming three men to the court so far, has chosen his nominees from Pacific and Atlantic coast states — Chief Justice Earl Warren of California, Justice John M. Harlan of New York, and Justice William J. Brennan of New Jersey.

Even if the President names a Republican this time, the line-up in the court will be: Democrats, 5; Republicans, 4.

Of those now on the court, Justice Felix Frankfurter is 74 years of age, and Justice Hugo L. Black will be 70 on Feb. 27.

These two, along with Justice William O. Douglas and Justice Reed, were named to the court by President Franklin D. Roosevelt.

Roosevelt was much irritated by the fact that he was not able to make a single appointment to the Supreme Court in his first term. He complained about it openly when he was pushing his so-called "court-packing" plan in 1937. Ultimately he was able to name eight men to the high tribunal, four in his second term and four in his third.

Truman got a chance to name only two in his seven and a half years in the White House —Justice Burton and Justice Tom Clark.

President Eisenhower would appear to have a good chance to name more than any Chief Executive except Washington and the second Roosevelt. The record is held, of course, by Washington, who appointed the original six members of the court and then filled seven vacancies. Lincoln, Jackson and Taft each made five appointments.

President Eisenhower, in acknowledging Justice Reed's letter yesterday, congratulated the Kentuckian on his "long and splendid record in public service," and expressed appreciation for "the dedication and devotion that are so much a part of your reputation."

Chief Justice Warren issued this statement:

"Mr. Justice Reed has made a great contribution to the court in his 19 years of service on it. We will miss both his wise counsel and his genial disposition. He has been at the same time associate and friend to all of us. We wish him every happiness in his well-earned retirement."

SUPREME COURT

Justice Harlan Dissents

¶ The following is extracted from the dissenting opinion of Justice John Marshall Harlan, in which he was joined by Justices Reed and Burton, in the case of William Earl Fikes *vs. State of Alabama, the U.S. Supreme Court, reversed the burglary conviction of Fikes, a Selma Negro, who had been accused of attempting to rape a white woman. Justice Harland, Reed and Burton disagreed with the majority.—Ed.*

THE setting aside of this conviction, in mp opinion, oversteps the boundary between this court's function under the 14th Amendment and that of the state courts in the administration of state criminal justice. I recognize that particularly in "coerced confession" cases the boundary line is frequently difficult to draw. But this court has recognized that its corrective power over state courts in criminal cases is narrower than that which it exercises over the lower federal courts.

Justice Harlan

In this instance I do not think it can be said that the procedures followed in obtaining petitioner's confessions violated constitutional due process. The elements usually associated with cases in which this court has been constrained to act are, in my opinion, not present here in constitutional proportions, separately or in combination. Concededly, there was no brutality or physical coercion. And psychological coercion is by no means manifest.

While the total period of interrogation was substantial, the questioning was intermittent; it never exceeded two or three hours at a time, and all of it took place during normal hours; "relay" tactics, such as were condemned in *Turner vs. Pennsylvania*, and other cases, were not employed. True, petitioner's mental equilibrium appears to have been less than normal, but these facts were before the trial judge and the jury. The absence of arraignment, much as that practice is to be deprecated, loses in significance in light of the state's representation at the oral arguments that this was not an unusual thing in Alabama.

As this court recognizes, it did not of itself make the confessions inadmissible. Petitioner's removal to Kilby Prison, after authorization by a state circuit judge, stands on quite a different footing from the episode in *Ward vs. Texas*. And I am not satisfied that there was any deliberate purpose to keep the petitioner incommunicado. Before the first confession, petitioner, at his own request, was permitted to see the sheriff of his home county, and his employer. His father, although not permitted to see petitioner on the day of the first confession, was allowed to see him before the second confession. The lawyer who sought to see petitioner was refused permission because, having no authority from petitioner or his family to represent him, the prison authorities evidently thought he was trying to solicit business.

The Supreme Court of Alabama, after reviewing the record, has sustained the conviction. I find nothing here beyond a state of facts upon which reasonable men might differ in their conclusions as to whether the confessions had been coerced In the absence of anything in the conduct of the state authorities which "shocks the conscience" or does "more than offend some fastidious squeamishness or private sentimentalism about combatting crime too energetically," I think that due regard for the division between state and federal functions in the administration of criminal justice requires that we let Alabama's judgment stand.

GEORGIA LEADERS ATTACK 6 JUSTICES

Resolution Asks Impeachment of High Court Members on Subversion Charges

ATLANTA, Feb. 13 (UP)—Gov. Marvin Griffin's lieutenants presented a resolution to the State Legislature today asking impeachment of six United States Supreme Court Justices on the ground that they were guilty of "high crimes and misdemeanors."

The resolution, to be introduced tomorrow, accused Justices William O. Douglas and Hugo L. Black of accepting "awards of money and things of value" from Communist-front organizations while members of the Supreme Court.

It singled out Justice Felix Frankfurter as "a member of the legal committee of the National Association for the Advancement of Colored People." It said he had helped the N. A. A. C. P. in "its objectives as a Communist-front organization."

Justices Black, Douglas and Stanley F. Reed participated in a 1943 ruling in which a "proven and avowed ardent Communist" was held not deportable, the resolution stated. Chief Justice Earl Warren and Justice Tom C. Clark were the others whose impeachment was sought.

Retaliatory Measure

Although the Supreme Court's anti-segregation rulings were not cited by the resolution, the move was a retaliatory one by the Deep South legislators.

Three justices who took part in the unanimous decision were not mentioned. They were Harold H. Burton, John M. Harlan and Sherman Minton. Mr. Minton retired in September and has been succeeded by William J. Brennan Jr.

The draft resolution was dropped into the House hopper by Speaker Marvin Moate and Representative W. Colbert Hawkins, the floor leader of Governor Griffin's segregation-dedicated administration. It called on "sister states" in the South to join in the impeachment move.

Under the rules of the Georgia Legislature the resolution must be on file with the clerk for twenty-four hours, after which it can be introduced. Action on it normally would take several days.

Representative Comments

tive E. L. Forrester, Democrat of Georgia, said he would consider the resolution to impeach the justices if it was presented to him as he would "give respect to any resolution coming from my state."

He said that if legal grounds for impeachment was demonstrated and facts "capable of proof" were submitted as supporting evidence, he would "initiate such proceedings." Mr. Forrester is a member of the House Judiciary Committee.

The resolution cited reports in The Washington Afro-American of April 14, 1945, and The New York Times of Dec. 12, 1952, as evidence that Justices Black and Douglas had received "awards of money and things of value" from Communist-front organizations.

The resolution cited a 1943 ruling participated in by Justices Black, Reed and Douglas in which William Schneiderman, the "proven" Communist referred to, was confirmed as a naturalized citizen and allowed to stay in the country.

Other cases cited by the resolution included:

¶The case of Julius and Ethel Rosenberg, atomic spies who were executed. Justice Douglas "wilfully granted an order to stay the execution of said Russian spies," the resolution said.

¶The conviction of Eugene Dennis and other Communist leaders, affirmed by the high court in 1951. Justices Reed and Frankfurter dissented and criticized the majority, the resolution said, for the "specious" reason that the prosecution had denied the defendants their freedom of speech.

¶Three Supreme Court decisions in which, the resolution asserted, Justices Warren, Black, Red and Frankfurter "usurped powers reserved to the states and expressly declined by the Congress and committed high crimes and misdemeanors."

The resolution referred to Page 37 of the edition of The Times cited. That page carried a United Press dispatch describing the presentation of the $1,000 Sidney Hillman Award to Mr. Douglas in Washington. Mr. Douglas was described by the Congress of Industrial Organizations as "one of the most steadfast guardians of our individual liberties."

RESOLUTIONS IN GEORGIA HOUSE

Cook Asks 6 Justices Be Impeached

ATLANTA, Feb. 13 (AP) — With backing of Gov. Marvin Griffin's administration leaders, a move by Atty. Gen. Eugene Cook to seek impeachment of six members of the U.S. Supreme Court was launched in the Georgia House today.

Named in a resolution calling for their impeachment were Chief Justice Earl Warren and Associate Justices Reed, Black, Douglas, Frankfurter and Clark. Justices Burton, Minton and Harlan were not mentioned and sponsors did not say why.

The resolution, signed by Griffin's House lieutenants, Speaker Marvin Moate and Floor Leader Colbert Hawkins, was handed to the House clerk for introduction tomorrow. Hawkins said it probably would be ready for a vote early next week.

The long resolution bases the charges made on a number of court decisions, including some on segregation, and other items.

If passed, it would be a declaration by the Georgia Legislature that the named justices are "guilty of attempting to subvert the constitution of the United States and of high crimes and misdemeanors in office, and of giving aid and comfort to the enemies of the United States."

It would call on the Georgia members of the U.S. House of Representatives to initiate impeachment procedings under the Constitution and rules of the House.

Cook said a resolution by a sovereign state is one of the ways in which impeachment action can be started by a state. He said he was assisted in drafting the resolution by representatives from Alabama, Louisiana and Mississippi. He said he believes the legislatures of those states will adopt similar resolutions.

(Editor's Note: Efforts by The Advertiser to determine the identity of the Alabama advisers referred to by Atty. Gen. Cook were not successful last night.)

The resolution would be an official request to Georgia congressmen to institute impeachment proceedings.

The first step is a resolution of impeachment by a member of the U.S. House. It must then be approved by the House Judiciary Committee and then by the House itself.

By a majority vote of a quorum, the House can pass articles of impeachment and thereafter, the Senate tries the charges with "managers" appointed from the House serving as prosecutors.

A two-thirds vote of the entire Senate membership is required for impeachment. The penalty is loss of office.

FRANKFURTER

CLARK

BLACK

DOUGLAS

WARREN

REED

HIGH COURT REFUSES INTEGRATION PLEAS

Florida Pool, Cafeteria In Texas Opened

PUBLIC POWER LOSES

By The United Press

WASHINGTON, April 1.—The Supreme Court refused Monday to upset lower court rulings requiring the admission of Negroes to a municipal pool and beach in Florida and to a cafeteria in Texas.

The high court specifically rejected appeals from a decision of the Fifth Circuit Court of Appeals last December that Negroes must be admitted into the city pool and beach in St. Petersburg, Fla., and into the courthouse cafeteria in Houston, Texas.

In Line With Policy

The appeals were filed by the City of St. Petersburg and by Harris County, Texas. They were rejected in brief orders without written decisions.

The Supreme Court's actions, making final the lower court's decisions, were in line with the high court's policy of allowing lower courts to decide specific race cases within the framework of its 1954 school segregation decisions.

In both cases, the complaining Negroes contended they were being denied equal protection of the laws under the Constitution's 14th Amendment. The Circuit Court agreed.

In other actions, the Supreme Court:

Rejected an appeal by public power interests from a lower court decision permitting the development by a private power company of the Hells Canyon site on the Idaho-Oregon border. The action makes final a 1955 decision of the Federal Power Commission;

Agreed to review the case of Stanislaw Nowak, of Detroit, Polish-born former Michigan state senator who was denaturalized on grounds he concealed his former Communist Party membership when he sought United States citizenship;

Exemption Upheld

Ruled eight to none that members of an employer association legally may lock out their workers in retaliation for a strike against a single employer. The case involved the Teamsters Union and eight linen supply companies in the Buffalo-Niagara Falls-Dunkirk area in New York;

Ruled six to two that sick benefits paid to an employe in 1949 under a private employer health insurance plan were exempt from income taxes. Similar payments by commercial insurance companies already were exempt.

Congress in 1954 changed the tax law to provide a tax exemption under certain conditions for sick benefits up to $100 a week.

Merry-Go-Round

By DREW PEARSON

WASHINGTON

JUSTICE JOHN MARSHALL HARLAN of the Supreme Court is the grandon of John Marshall Harlan, who also served on the Supreme Court shortly after the Civil War and wrote a ringing dissent in the first segregation case to come before the Court under the Fourteenth Amendment.

The elder Justice Harlan came from Kentucky where he held slaves but battled for the slaves, first as a member of the Union Army, later on the Supreme Court.

The other day his grandson, now on the Supreme Court, got an interesting visit from Robert J. Harlan. Robert Harlan is a leading Negro attorney of the Washington bar.

"My great-grandfather," he told Justice Harlan, "served as a slave for your grandfather and was liberated by him. Your grandfather helped him save some money and eventually he started a little photography shop in Cincinnati."

Attorney Harlan brought with him interesting documentary evidence showing the connection between his great-grandfather and the Justice's grandfather. His great-grandfather had taken the name Harlan from the slave owner, as frequently happened in those days.

Note—The segregation case of U. S. vs. Harris in which the elder Harlan wrote his dissent in 1883, buried the 14th Amendment for 70 years. Congress had passed an act giving equal privileges to Negroes in "inns, public conveyances, and theaters." Northern members of the Court ruled it unconstitutional. Harlan, a southerner, wrote: "The right of a colored person to use an improved highway upon the terms accorded to free men of other races is . . . fundamental . . . It is for Congress, not the Judiciary, to say what legislation is appropriate . . . Constitutional provisions adopted in the interest of liberty have been so construed as to defeat the ends the people desired to accomplish."

Highest Court Forbids Segregation In Endowed School for Orphans

Constitution Atlanta, Ga. P. 1
Tues. 4-30-57

WASHINGTON, April 29 (AP)—The Supreme Court today ruled out racial segregation in Philadelphia's Girard College, which for 109 years has admitted only "poor white male orphans" as specified in the will of its founder.

In a unanimous, unsigned decision, the court held that the board of directors of City Trust of Philadelphia, which administers the school, is an agency of the State of Pennsylvania.

Therefore, even though the board was acting as a trustee, the court said its refusal to admit two boys to the school "because they were Negroes was discrimination by the state." "Such discrimination is forbidden by the 14th Amendment," it added.

The court cited its 1954 decision holding racial segregation in public schools to be unconstitutional.

French-born Stephen Girard, who amassed a vast fortune as a miner, merchant and banker, left most of his estate to Philadelphia for various municipal purposes when he died in 1831 at the age of 80.

A major bequest was two million dollars to establish Girard College. The will named the City of Philadelphia as trustee to set up and operate a school for "poor white male orphans."

The college opened in 1848 and until 1869 was under the direct charge of the City Council and its various committees. Because of dissatisfaction with the manner in which it was managed, the State Legislature in 1869 transferred direction of the school to the board of directors of City Trust, which includes city officials.

The case in which the court acted today began in February 1954 when William Ash Foust and Robert Felder applied for admission to the school. The board of directors at City Trust adopted a resolution rejecting their applications as contrary to Girard's will.

The Negro boys petitioned Orphans' Court in Philadelphia to order the board to admit them. They alleged the board's action violated the 14th Amendment, which guarantees all citizens equal protection of the law.

Orphans' Court ruled the city could exclude Negroes without violating the 14th Amendment. The Pennsylvania Supreme Court, in November, 1956, with one judge dissenting, affirmed the ruling of the Orphans' Court.

The two Negro boys then asked the Supreme Court to overturn the state court decision.

Girard College Ban On Negroes Voided Despite 1848 Rule

Times P. 1
Tues. 4-30-57
New York, N. Y.

By LUTHER A. HUSTON

Special to The New York Times.

WASHINGTON, April 29—The Supreme Court today struck down a barrier that had prevented Negroes from attending Girard College in Philadelphia.

The court ruled unanimously that the board operating the college was an agency of the Commonwealth of Pennsylvania. Refusal to admit Negroes is state discrimination, which is forbidden by the Fourteenth Amendment, it held.

The amendment provides that no state shall deny to any person equal protection of the laws. In a decision in May, 1954, the Supreme Court held that separation of races on the basis of color in public schools was a denial of such protection. It cited the school segregation decision as the basis for its ruling today.

State Tribunal Reversed

The verdict reversed a judgment of the Pennsylvania Supreme Court, which held that the Girard case did not come within the Federal high court's segregation ruling and that the amendment was not applicable.

Stephen Girard, a merchant and philanthropist, died in 1831. He left $6,000,000 to be used to establish a school for "poor white, male orphans." The school was opened in 1848.

The city of Philadelphia was named trustee. Since 1869, by an act of the Pennsylvania Legislature, the trust has been administered and the schol operated by the board of directors of city trusts of Philadelphia.

The college occupies a forty-five-acre tract in North Philadelphia in a districtc that is now predominantly Negro. It gives shelter and education to 1,200 youths.

In February, 1954, William A. Foust and Robert Felder applied for admission. Their applications were refused on the ground that, as Negroes, they were not eligible under the Girard will.

A suit was filed in their behalf to compel the trustees to enroll them in the school. In January 1956, the provision in the will was unanimously upheld by the Philadelphia Orphans Court.

The Pennsylvania Supreme Court affirmed this decision by 5 to 1. It said:

Tues. 4-30-57

"It should be clearly understood at the outset that the beneficiaries of the charity of Stephen Girard are not being determined by the State of Pennsylvania, by the city of Philadelphia, nor by this court, but solely by Girard himself in the exercise of his undoubted right to dispose of his property by will, and in so doing to say, within the bounds of the law, who shall enjoy its benefits.

"It is one of our most fundamental legal principles that an individual has a right to dispose of his own property by gift or will as he sees fit."

The dissenting opinion held that Mr. Girard had not intended that his trust should be administered in any way contrary to "the intendment of the Constitution."

The Federal high court's ruling was per curiam, or unsigned opinion. It noted that Pennsylvania and Philadelphia had joined in the suit, asking that the ruling of the Orphans Court be set aside.

"The board which operates Girard College is an agency of the State of Pennsylvania," the court said. "Therefore, even though the board was acting as trustee, its refusal to admit Foust and Felder to the college because they were Negroes was discrimination by the state. Such discrimination is forbidden by the Fourteenth Amendment.

"Ccccordingly, the judgment of the Supreme Court of Pennsylvania is reversed and the case is remanded for further proceedings not inconsistent with this opinion."

Joseph P. Gaffney Sr. and Owen B. Rhoads of Philadelphia were lawyers for the board of trustees. The appeal of the Negroes was filed by William T. Coleman Jr. and Raymond P. Alexander of Philadelphia, and Louis Pollak of the Yale Law School.

ment," it added, citing its 1954 decision holding racial segregation in public schools to be unconstitutional.

French-born Stephen Girard, who amassed a vast fortune as a miner, merchant and banker, left $2 million to establish Girard College, with the City of Philadelphia as trustee. Because of dissatisfaction with the manner in which it was managed, the State Legislature in 1869 transferred direction of the school to the board of directors of City Trust, which includes city officials.

The case in which the court acted began in February, 1954, when William Ash Foust and Robert Felder applied for admission to the school. Rejecting their applications as contrary to Girard's will, the board conceded the two boys had all qualifications for admission, save race.

Orphans' Court in Philadelphia ruled the city could exclude Negroes without violating the 14th Amendment. The Pennsylvania Supreme Court affirmed the ruling, which the boys then asked the Supreme Court to overturn.

Court Outlaws Will's Race Ban

Post & Times Herald P. 6-B
Tues. 4-30-57
Washington, D. C.

Associated Press

The Supreme Court yesterday ruled out racial segregation in Philadelphia's Girard College, which for 109 years has admitted only "poor white male orphans," as specified in the will of its founder.

In a unanimous, unsigned decision, the court held that the board of directors of City Trust of Philadelphia, which administers the school, is an agency of the State of Pennsylvania.

Therefore, even though the Board was acting as a trustee, the court said its refusal to admit two boys to the school "because they were Negroes was discrimination by the State."

"Such discrimination is forbidden by the 14th Amend-

Segregation Banned In Private School

Post-Herald Tues. 4-30-57

B'ham, Ala. P.1

Admit Negroes, High Court Rules

WASHINGTON, April 29 (AP)—The Supreme Court today ruled out racial segregation in Philadelphia's Girard college which for 109 years has admitted only "poor white mal orphans" as specified in the will of its founder.

In a unanimous, unsigned decision, the court held that the board of directors of city trust of Philadelphia, which administers the school, is an agency of the State of Pennsylvania.

Therefore, even though the board was acting as a trustee, the court said its refusal to admit two boys to the school "because they were Negroes was discrimination by the state." "Such discrimination is forbidden by the 14th Amendment," it added.

The court cited its 1954 decision holding racial segregation in public schools to be unconstitutional.

French-born Stephen Girard, who amassed a vast fortune as a miner, merchant and banker, left most of his estate to Philadelphia for various municipal purposes when he died in 1831 at the age of 80.

A major bequest was two million dollars to establish Girard College. The will named the city of Philadelphia as trustee to set up and operate a school for "poor white male orphans."

The college opened in 1848 and until 1869 was under the direct charge of the city council and its various committees. Because of dissatisfaction with the manner in which it was manageed, the state legislature in 1869 transferred direction of the school to the board of directors of city trust, which includes city officials.

The case in which the court acted today began in February, 1954, when William Ash Foust and Robert Felder applied for admission to the school. The board of directors at city trust adopted a resolution rejecting their applications as contrary to Girard's will.

The board and all other parties involved in the litigation conceded the two boys had all qualifications for admission, except race.

The boys petitioned Orphans' Court in Philadelphia to order the board to admit them. They alleged the board's action violated the 14th Amendment, which guarantees all citizens equal protection of the law.

Orphans' Court ruled the city could exclude Negroes without violating the 14th Amendment. The Pennsylvania Supreme Court, in November, 1956, with one judge dissenting, affirmed the ruling of the Orphans' Court.

The two Negro boys then asked the Supreme Court to overturn the state court decision. They were supported by Atty. Gen. Thomas D. McBride of Pennsylvania and Mayor Richrdson Dilworth of Philadelphia, among others.

In its opinion upholding the will, the Pennsylvania Supreme Court said, "It is one of our most fundamental legal principles that an individual have the right to dispose of his property by gift or will as he sees fit."

The state court held that Girard was not a public school but an orphan establishment supported entirely by the Girard estate. It noted that not a penny of state or city money has even gone into the school.

The Supreme Court did not go into the question of whether Girard is a public or private school. It merely held that the board which operates it is an agency of the state and as such cannot discriminate on racial grounds.

School, Set Up for Whites by Will Of Founder, Must End Segregation

Courier-Journal Tues. 4-30-57 Louisville, Ky.

P. 2

Washington, April 29 (AP)—The Supreme Court today ruled out racial segregation in Philadelphia's Girard College, which for 109 years has admitted only "poor white male orphans" as specified in the will of its founder.

In a unanimous, unsigned decision, the court held that the board of directors of City Trust of Philadelphia, which administers the school, is an agency of the State of Pennsylvania.

Therefore, even though the board was acting as a trustee, the court said, its refusal to admit two boys to the school "because they were Negroes was discrimination by the State."

"Such discrimination is forbidden by the 14th Amendment," it added.

The court cited its 1954 decision holding racial segregation in public schools to be unconstitutional.

French-born Stephen Girard, who amassed a vast fortune as a miner, merchant, and banker, left most of his estate to Philadelphia for various municipal purposes when he died in 1831 at the age of 80.

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The college opened in 1848 and until 1869 was under the direct charge of the City Council and its various committees.

Because of dissatisfaction with the manner in which it was managed, the State Legislature in 1869 transferred direction of the school to the board of directors of City Trust, which includes City officials.

The case in which the court acted today began in February, 1954, when William Ash Foust and Robert Felder applied for admission to the school. The board of directors at City Trust rejected their applications as contrary to Girard's will.

The boys petitioned Orphans Court in Philadelphia to order the Board to admit them. They alleged the board's action violated the 14th Amendment, which guarantees all citizens equal protection of the law.

Orphans Court ruled the City could exclude Negroes without violating the 14th Amendment. The Pennsylvania Supreme Court, in November, 1956, with one judge dissenting, affirmed the Orphans Court ruling.

The two Negro boys then asked the Supreme Court to overturn the State-court decision. They were supported by Attorney General Thomas D. McBride of Pennsylvania and Mayor Richardson Dilworth of Philadelphia, among others.

Girard's estate of $2,000,000 in 1832 had grown to $98,000,000 by 1955, with an annual income of $2,211,000.

In its opinion upholding the will, the Pennsylvania Supreme Court said: "It is one of our most fundamental legal principles that an individual have the right to dispose of his property by gift or will as he sees fit."

The school is located in the heart of Philadelphia in what is now substantially a Negro area. It maintains about 1,130 boys annually.

The U. S. Supreme Court did not go into the question of whether Girard is a public or a private school. It merely held that the board which operates it is an agency of the State and as such cannot discriminate on racial grounds.

The board's opportunity

Afro American - P. 10

In ruling that Philadelphia's 126-year old Girard College could no longer restrict its enrollment to "white male orphans only," the United States Supreme Court cited its momentous school decision of 1954.

That opinion held that segregation is discrimination, an offense that is forbidden by the Fourteenth Amendment.

Baltimore, Md. 12d

Significantly it was in July of this same year that the fight to make administrators of Girard comply with the Constitution began.

And more importantly it will be on May 17, the third anniversary of the school decision, that the Board of City Trusts the school decision, that the Board of City Trusts meets to discuss future policy in the operation of the school.

Sat. 5-11-57

ALREADY THERE have been those who profess to see a legal loophole through which the board may evade the clear intent of the Supreme Court's ruling and continue to operate Girard as a segregated school in an integrated community.

We think the suggestion should be promptly brushed aside as base and unworthy of the City of Brotherly love.

The coincidence of the May 17 meeting date provides the honorable men who sit on the Board of City Trusts an excellent opportunity to demonstrate a renewed dedication of their faith in America as a government of laws, not of men.

* * *

WE ARE CONFIDENT they will promptly open the doors of Girard College, not only to the youngsters who were plaintiffs in the suit, but to all other orphaned boys who otherwise qualify.

Would Be Mistake To Try Impeachment, Davis Says

Constitution Atlanta, Ga.
Wed. 2-27-57 p. 13

Constitution Washington Bureau

WASHINGTON, Feb. 26—Rep. James C. Davis of Stone Mountain said today it would be "a mistake" for the Georgia delegation in Congress to institute impeachment proceedings against justices of the U.S. Supreme Court.

Davis' statement was a strong indication that the delegation has no intention of following through on a resolution of the Georgia Legislature calling for impeachment of the justices.

The Fifth District congressman was highly critical of the Supreme Court in his statement and congratulated the Legislature for its recent condemnation of the court.

WOULD BE DEFEATED

"I do not think, however, that it is possible to impeach these justices with the present personnel of Congress," Davis said, "and I believe it would be a mistake to file the proceedings, knowing in advance that they would be defeated."

There were reports here that the entire Georgia delegation at one time planned to issue a statement identical to or similar to Davis' comments but decided against it and let Davis make it on his own.

The Stone Mountain lawyer, in spite of his counsel against filing impeachment proceedings at this time, said he thinks the court's "pattern of usurpation of legislative functions must be stopped."

GROUNDS FOR FEAR

The court's conduct over the past 20 years, Davis said, has "given the Georgia Legislature and all people ample grounds to fear that constitutional government is in danger of being destroyed and judicial government set up."

Since 1949, he said, he has been pointing out in speeches on the floor of the House and elsewhere that the court's conduct has been "striking a threatening blow at our form of government."

Georgians have been particularly up at arms against the Supremen Court ever since the 1954 school desegregation ruling.

Griffin Aims At Congress, Foe Asserts

Constitution Atlanta, Ga.
Thurs. 2-28-57

By WILLIAM M. BATES

State Sen. Bobby Lee Cook charged Wednesday that Gov. Griffin sponsored the Supreme Court impeachment resolution to lay the groundwork for seeking a seat in the U.S. House or Senate.

The Summerville senator said the Griffin administration did not offer the resolution in the Georgia Legislature in "good faith" but in an attempt to "embarrass" the state's congressional delegation.

But Rep. Colbert Hawkins of Screven County, Griffin's House leader, denied that the resolution calling for impeachment of six high court justices had any political motives.

"There is absolutely nothing to that," Hawkins declared. "I don't know any member of Congress that anyone sought to lay a trap for with the resolution."

Cook and Hawkins made the statements in commenting on the apparent decision of the Georgia delegation in the House of Representatives not to institute impeachment proceedings as requested by the resolution.

The resolution, adopted by the state House and Senate in the recent session, charged the six justices with high crimes" and misdemeanors" in urging their removal.

Named in the resolution were Chief Justice Earl Warren and Associate Justices Clark, Black, Douglas, Frankfurter and Reed.

Cook said the reaction of the Georgia delegation in Washington had borne out his statements against the resolution when it was before the state Senate last week. He branded the resolution "ridiculous" and said it would impair the efforts of the state's delegation in handling the segregation issue in Washington.

Constitution
Thurs. 2-28-57 p. 16

He said Griffin may have sponsored the resolution with a view toward running against Sen. Russell in 1960. If nothing is done in Washington on the impeachment move it would give Griffin a campaign talking point, Cooke said.

"It is my observation that when Gov. Griffin finishes this term that he could not be elected to the General Assembly of Georgia, much less to the dignified position of senator of the United States," Cook said.

Hawkins, while emphatically denying any political motivation behind the impeachment resolution would push the move in Congress.

Rep. Raymond Reed of Cobb County, who opposed the resolution in the House, said, "The Georgia delegation is showing signs of intelligence that behooves the people of Georgia.

"The delegation lets the nation know that there are some responsible citizens in Georgia regardless of the irresponsible actions of the Legislature," Reed said.

Impeachment Move Poised for Capital

Journal & Constitution
Atlanta, Ga. p. 1-B

Georgians in Washington Soon to Get Resolution Against High Court Judges

Sun. 2-24-57

When Gov. Marvin Griffin signs it, a legislative resolution seeking impeachment of six justices of the U.S. Supreme Court will be rushed along to Georgia's congressional delegation for some sort of reception in Washington.

The resolution was one of a number of administration-sponsored segregation measures which won passage at the 1957 session.

Gov. Griffin received only two setbacks on the ever-popular subject of antimixing bills this time:

He had to retreat a bit on a measure which would have repealed the state's compulsory school attendance law forthwith. It was changed to say the governor could suspend the law during emergencies.

• • •

HE GOT A REAL jolt when the House refused to enact before adjourning time a bill to prohibit interracial sports and social activities. The measure was not an administration bill but a foster child which the governor was forced into the position of adopting in principle at least.

The legislators voted overwhelmingly with the governor's wishes giving him broader authority to quell integration incidents; ask Congress to declare the 14th and 15th amendments null and void; give the Georgia Education Commission subpoena powers and authority to tell the "Georgia story" on segregation to the nation.

• • •

ON ITS OWN, the General Assembly passed a bill which gives the state authority to reacquire jurisdiction over state roads which run through federal reservations. Rep. Sam S. Singer of Lumpkin, author of the measure, said he had in mind doing something about "Negro MPs" when he thought it up.

Still another little-publicized but finally passed bill may become one of the most far-reaching measures enacted at the 1957 session. It further defines and sets out punishments for "barratry," the act of stirring up lawsuits.

Rep. Harold Murphy, Buchanan, author of the bill, said it was aimed at the National Assn. for Advancement of Colored People. "About the only people who will be against this bill will be ambulance-chasing lawyers and the NAACP," he commented when he introduced the measure.

• • •

THE RESOLUTION seeking to initiate impeachment proceedings against Chief Justice Earl Warren and Justices Black, Douglas, Reed, Frankfurter and Clark charges them with "high crimes and misdemeanors" and cites numerous decisions, including segregation and sedition rulings, to support them.

Subjected to heated criticism in debate, it passed with only four votes more than a constitutional majority in the House and by a slightly better margin in the Senate. But only one change was made. A section, based on stories in the Washington Afro-American and the New York Times, charging two justices with accepting bribes, was deleted.

The "baseball bill" was introduced by Sen. Leon M. Butts Jr. of Lumpkin and breezed through the Senate, 35-0. It was headed for slow death in the House State of Republic Committee until word came that Gov. Griffin wanted it reported out.

Reed, on Both Sides of the Bench

Post + Times Herald
Washington D.C.
P. 8-A
12-25-57

By Richard L. Lyons
Staff Reporter

Stanley Forman Reed probably has seen more of both sides of the United States Supreme Court bench than any other man living.

As Solicitor General from 1935 to 1938 he was the Government's No. 1 trial lawyer in the days when the New Deal was on trial before the Court. For six years before that he had been chief counsel of other Federal agencies.

Since 1938, Reed has sat on the other side of the bench in the black robes of an Associate Justice.

2-1-57

Yesterday, 19 years to the day after taking his seat, Reed notified the President that he will retire on Feb. 25.

More Time for the Farm

Reed chatted amiably but sparingly with reporters in his chambers yesterday. He said his health is "quite good" but he thinks at age 72 it's time to step down. He and his wife will have more time for their Kentucky farm, but plan to stay on at the Mayflower Hotel apartment which they rented as temporary quarters in 1929.

Reed said he had no definite plans for retirement "except that I'm not going to write any memoirs."

He would have a story to write if he changed his mind. Reed's 28 years in Washington in executive jobs and on the Court covered a generation of boom, bust, war and prosperity—an era when the role of Government took a sharp turn into social and economic fields. Reed played an important part in the change—not as architect but as legal technician.

As Solicitor General he defended the New Deal before the Court. The Court struck down the National Recovery and Agricultural Adjustment Acts (NRA and AAA). But he won the rest, including several tests of the constitutionality of the Wagner Act—considered labor's Magna Carta.

Franklin D. Roosevelt appointed Reed to the Court a few months after losing his fight to liberalize it with his "court-packing" plan. This would have permitted the President to appoint a new Justice for every one who stayed on after age 70. Reed took no public part in the Court fight except to write a letter which said more judges might help with the work load. Yesterday he said he thinks nine justices are enough.

New Deal and Afterward

Reed's role as legal spokesman for the New Deal and the fact that he often takes what is now considered the conservative side have caused some to describe him as a liberal who went conservative. Men who have worked with him say that oversimplification is inaccurate.

Reed's only approach, they say, has been whether a law is constitutional, not whether it is good or bad. He could argue for the NRA whether he liked it or not if he thought it legal and could as easily take a conservative position in another case.

At one point he was called by some the swing man on the Court——the Justice whom lawyers never were sure of and had to convince to win. If he now seems conservative, it may be partly because the Court and public acceptance have become more liberal.

A former associate said of Reed: "I would call him innately conservative by background, training and instinct. But he ahs a great distrust for extremes. He isn't the most brilliant member of the Court but he has good judgment and his working knowledge of government has made him a steadying influence on the Court."

Perhaps because of his nine years in the Executive branch before going on the Court, Reed has been more willing than some of his colleagues to uphold Government regulations unless good reason was shown to knock them down. He served three years as general counsel of the Federal Farm Board and three more as top lawyer for the Reconstruction Finance Corporation before becoming Solicitor General.

Reed is little known to the general public though he has served on the Court longer than any present member but Hugo L. Black. There are no anecdotes about Reed. He doesn't climb mountains or throw off sparks of brilliance that make headlines. He has worked his head off and helped make history.

Physically, Reed is tall, bald and now quite slender after a bout with high blood pressure a few years ago. He is a friendly man. A former law clerk said that through the period of feuds within the court "no one could say anyone was mad at Stanley Reed."

Reed was born in Maysville, Ky., on the last day of 1884. He studied law at the University of Virginia, Columbia and in Paris, served in the Kentucky Legislature and had built up a good small town law practice when he was called to Washington in 1929.

Man In A Hurry

Afro-American
Baltimore Md.
2-23-57
P. 4

With his nomination by President Eisenhower to be an associate justice, Charles Evans Whittaker in three comparatively brief years has moved up from a district judge to a seat on the nation's highest tribunal.

The speed with which he has been advanced may appear unseemly to those who don't know him, but not to friends in Kansas City.

Judge Whittaker has always been a man in a hurry.

Born 56 years ago on a farm two miles north of Kansas City, he finished nine grades in a country school, before coming to Kansas City with $700 he had saved up from the sale of skins of trapped skunks.

Taking a job as an office boy in a law firm, he finished high school and the old Kansas City School of Law in four quick years.

Without bothering to go to college, he passed the Missouri bar and was practicing law a year before graduating.

Four years later he was a junior member of the law firm he had entered as an office boy and two years later his name was added to the firm title.

He was appointed U.S. District judge on July 19, 1954 and speedily cleaned up a congested docket.

Less than two years later, on June 22, 1956, he was elevated to the 8th U.S. Circuit Court of Appeals where he again raced through a heavy backlog of work.

His brilliant appellate court work and his clear, well-written opinions are believed responsible for his selection on March 2, 1957 for the Supreme Court.

The record indicates that Judge Whittaker is definitely Supreme Court material.

He is learned, eloquent and impartial, attributes that are certain to earn him the confidence and respect of associates on the bench and legal scholars who are to appear before him.

And above all, we have the warming assurance of men who know him well that race and color have never been factors in his rulings; that like Justice herself, he is absolutely color blind.

Washington merry-go-round—

News
P. 8-F
Birmingham Ala.
Sept. 3-10-57

Harlan reminded of grandfather's fight for slaves

BY DREW PEARSON

WASHINGTON, March 9—(NANA)—Justice John Marshall Harlan of the Supreme Court is the grandson of John Marhsall Harlan, who also served on the Supreme Court shortly after the Civil War and wrote a ringing dissent in the first segregation case to come before the court under the 14th amendment.

The elder Justice Harlan came from Kentucky where he held slaves but battled for the slaves, first as a member of the Union Army, later on the Supreme Court.

DREW PEARSON

The other day his grandson, now on the Supreme Court, got an interesting visit from Robert J. Harlan. Robert Harlan is a leading Negro attorney of the Washington bar.

"My great-grandfather," he told Justice Harlan, "served as a slave for your grandfather and was liberated by him. Your grandfather helped him save some money and eventually he started a little photography shop in Cincinnati."

Atty. Harlan brought with him interesting documentary evidence showing the connection between his great-grandfather and the justice's grandfather. His great-grandfather had taken the name Harlan from the slave owner, as frequently happened in those days.

The segregation case of U. S. vs. Harris in which the elder Harlan wrote his dissent in 1883, buried the 14th Amendment for 70 years. Congress had passed an act giving equal privileges to Negroes in "inns, public conveyances, and theaters." Northern members of the court ruled it unconstitutional. Harlan, a Southerner, wrote: "The right of a colored person to use an improved highway upon the terms accorded to free men of other races is . . . fundamental . . . It is for Congress, not the judiciary, to say what legislation is appropriate. . . . Constitutional provisions adopted in the interest of liberty have been so construed as to defeat the ends the people desired to accomplish."

Impeach 6 U. S. Justices, Georgia Resolution Asks

Post + Times Herald
P. 17-A
Thurs. 2-14-57
Washington D.C.

ATLANTA, Feb. 13 (AP)—Gov. Marvin Griffin's lieutenants presented a resolution to the State Legislature today asking impeachment of six United States Supreme Court justices on the grounds they were guilty of "high crimes and misdemeanors."

The resolution, due for formal introduction Thursday, accused Justices William O. Douglas and Hugo Black of accepting "awards of money and things of value" from Communist front organizations while members of the high court.

It singled out Justice Felix Frankfurter as "a member of the legal committee of the National Association for the Advancement of Colored People," saying he had helped the NAACP in "its objectives as a Communist front organization."

Justices Black, Douglas and Stanley Reed had participated in a 1943 ruling in which a "proven and avowed ardent Communist front organization."

Justices Black, Douglas and Stanley Reed had participated in a 1943 ruling in which a "pro in a 1943 ruling in which a "proven and avowed ardent Communist" was held not deportable, the resolution stated. Chief Justice Earl Warren and Justice Tom Clark were the others whose impeachment was sought.

Although the high courts anti-segregation rulings were not cited by the resolution, the legislators' move was obviously retaliatory. The measure was dropped into the House hopper by Speaker Marvin Moate and Rep. W. Colbert Hawkins, floor leader of Griffin's segregation-dedicated administration. It called on "sister states in the South to join in the impeachment move.

12d 1957

Georgians Ask Impeachment Of Warren

Constitution
Hyra. 2-14-57
Atlanta, Ga.

A resolution seeking to initiate impeachment proceedings against Chief Justice Earl Warren and five associate justices of the U.S. Supreme Court was submitted in the Georgia House Wednesday.

Signed by Gov. Griffin's top lieutenants, Speaker Marvin Mote and Floor Leader Colbert Hawkins, it calls on the Georgia congressional delegation to begin impeachment proceedings in the U.S. House of Representatives.

In addition to Warren, the lengthy document names Justices Reed, Black, Douglas, Frankfurter and Clark. No mention is made of Justices Burton, Minton and Harlan and sponsors gave no explanation of the omission.

Under the rules of the Georgia House, the resolution must lie on the clerk's desk until Thursday morning when it will be formally introduced. It probably will go to the administration-dominated State of Republic Committee and a House vote is unlikely before early next week.

The resolution charges that the named jurists, "purporting to exercise powers vested in them as members of the Supreme Court of the United States, unlawfully usurped powers of the people to amend the Constitution and have exercised legislative powers vested solely in Congress or reserved to the states or the people and have given aid and comfort to enemies of the United States."

sure, drafted by Atty. Gen. Eugene Cook, was 107-33 with a constitutional majority of 103 necessary for passage.

The resolution, which charges "high crimes and misdemeanors" to Chief Justice Earl Warren and Associate Justices Black, Douglas, Reed, Frankfurter and Clark, now goes to the Senate.

While it encountered unexpected opposition, there were only two speeches on the resolution. Rep. Colbert Hawkins, the administration floor leader, spoke for it and Rep. Raymond Reed was the only opposition speaker.

The resolution makes a number of charges based principally on rulings in sedition and segregation cases. It would have the Georgia General Assembly declare that the six justices "are guilty of attempting to subvert the Constitution of the United States, and of high crimes and misdemeanors in office, and of giving aid or comfort to the enemies of the United States."

It would ask other states to pass similar resolutions and call on the Georgia members of the U.S. House of Representatives to initiate impeachment proceedings.

In answer to a question, Hawkins said he did not know why the other three Supreme Court justices were not named in the resolution.

than the required 103. In Washington Tuesday, Rep. E. L. (Tic) Forrester said the measure would receive "full study" if passed. Other Georgia congressmen withheld comment.

how he would vote. And Lt. Gov. Ernest Vandiver said "I frankly don't know" what the committee will do.

Sen. Quill Sammon of Lawrenceville said, "I can't vote for the impeachment of any public official without some facts to back up the charges."

Sen. William Trotter of LaGrange commented, "I'm going to vote against it. If it would do something I might vote for it, but it's not worth the paper it's as he has shown in one test after another an abiding sense of fairness and respect for individual rights.

* * *

"I DID not always hold this opinion of Justice Black. When he first came to this city, as far as I was concerned, he was just another senator from Alabama.

"My first personal contact with him came during the fight for a Federal law providing grants to the states in aid of public eduation. He was one of the sponsors of the bill.

rector of war mobilization; Mrs. Eleanor Roosevelt, the First Lady; Sen. Claude Pepper (Dem., Fla.);

"Dr. Frank P. Graham, chairman of the National War Labor Board; Judge Sherman Minton of Indiana (Ninth U.S. Circuit Court of Appeals), and Dr. Clark Foreman, president of the Southern Conference for Human Welfare."

The Georgia resolution accuses Justices Black and Douglas of accepting "awards of money and things of value" from Communist front organizations while members of the Supreme Court.

* * *

IT SINGLES out Justice Frankfurter as "a member of the legal committee of the NAACP" who has helped the organization in "its objectives as a Communist front organization."

Justices Black, Douglas and Reed participated in a 1943 ruling in which a "proven and avowed ardent Communist" was held not deportable, the resolution says.

Although the Supreme Court's school integration decisions were not mentioned in the resolution, it is admitted on all sides that the move is a retaliatory one being made by Dixie diehards.

* * *

THREE JUSTICES who participated in the historic school decision were not mentioned in the resolution. They are Harold H. Burton, John M. Harlan and Sherman Minton.

Justice Minton retired last September and was succeeded by Justice William J. Brennan Jr. of New Jersey.

In Washington, Rep. E. L. Forrester (Dem., Ga.) said he would consider the resolution to impeach the justices if it was presented to him as he would "give respect to any resolution coming from my state."

which was designed to force mixing of the races in public schools is just another in a long line of "welfare clause abuses."

He urged Southerners to use the principle of "interposition" not "secession" to win the "hateful race fight."

Graves writes a daily column for The Birmingham Post-Herald and is widely known in the South as a speaker.

Graves warned Southern voters to be "politically free' by not letting either the Democrats or Republicans be too sure of the South. He said "we must let them know that we demand the cajoleries and concessions which are our right as the nation's largest minority."

But he warned that there should be no third party for the South.

"By minding our manners," Graves added, using delaying tactics and wise use of our growing political and economic power, the South will solve the race problem and its other problems as well.

Said Graves: "The South to power! For its own sake, its own problems, yes, but for America's sake, for the three principles which most mean America and which make America today's earth's great place:

(1) The principle of liberty—and that means most of all liberty from government, from too much government too far from the governed. It means the magnificent American proposition that liberty and ham-and-eggs can both be had, that you don't have to be a slave or a socialist or an integrationist to have human welfare.

(2) The principle of rule by democracy, of rule by the people—and the indispensible corollary that the people who rule must be ever more excellent people as civilization grows ever more scientific and complex.

(3) And the principle of minority, of rule not only by the people but also against the people, the proposition that there are things 51 per cent of us just simply can't do to 49 per cent or 1 per cent or any state or group of us.

"That principle is the point and pith of the Constitution of the United States and of the compact under which we made these states a nation. Call it states rights, local self government, individual liberty, concurrent majorities, or something else, it is the Second Proposition of America."

Impeach-Justices Bill Passes House

Post-Herald Pg 1
Birmingham, Ala.
Tues. 2-19-57

ATLANTA, Feb. 18 (U.P.)—The Georgia House passed 107-33 and sent to the Senate today a resolution asking impeachment of six United States Supreme Court justices, including Chief Justice Earl Warren, on grounds they committed "high crimes and misdemeanors."

Although 33 votes were recorded against the measure, only one lawmaker took the floor to denounce it.

Rep. Raymond M. Reed said there is nothing in the measure to prove to legislators that the Supreme Court justices were guilty of crimes outlined in the document. He said it was "unreasonable and not logical" and would "make ourselves ridiculous in the eyes" of the nation.

Move To Impeach Justices To Go Before Senate Today

Constitution
Atlanta, Ga.
Wed. 2-20-57

A proposal to start impeachment proceedings against six U.S. Supreme Court justices comes before the Senate Rules Committee Wednesday in the face of mounting opposition.

The resolution passed the House Monday, with four more votes than the required 103. In Washington Tuesday, Rep. E. L. (Tic) Forrester said the measure would receive "full study" if passed. Other Georgia congressmen withheld comment.

"He said education was the hope of the South for both colored and white people, that he was conscious of the discrimination against our people in education and that whites in the hill countries were also victims of this discrimination.

"The greatest compliment that I can pay Justice Black is to say he is a southerner who is sufficiently sure of himself, who has sufficient faith in the South and southern people, who believe in democracy so deeply that he is willing to give the future its chance."

* * *

"OTHERS WHO praised the justice during the ceremonies were Fred M. Vinson, new di-

Ga. Snipes At Justices

Courier Pg 2
Pittsburgh, Pa.
2-23-57

ATLANTA—Six justices of the United States Supreme Court have been accused of subversion, high crimes and giving aid to enemies of the United States by five members of the Georgia House of Representatives.

The accusations were levelled in a resolution which was introduced before the Georgia State Legislature.

The document demanded the immediate removal from office of Justice Felix Frankfurter, charging that he is a "member of the Legal Committee of the NAACP" and further claimed that Justice Frankfurter "assisted that organization in realization of its objectives as a Communist-front organization to advocate and bring on racial strife."

THE RESOLUTION contends that Justice Frankfurter should have removed himself from the segregation cases instead of acting to "carry out the ultimate purposes of the NAACP."

Justices Warren, Black, Reed,

ADMINISTRATION RESOLUTION

Georgia House Okays Plan For Impeaching Six Justices

Advertiser
Montgomery, Ala.
Tues. 2-19-57

ATLANTA, Feb. 18 (AP)—An administration resolution calling for impeachment of six justices of the U.S. Supreme Court was approved in the Georgia House today.

The roll-call vote on the meas-

Three Senate Rules Committeemen told The Constitution Tuesday afternoon they would vote against the proposal; one other said he supported it; a fifth predicted passage but did not say

Graves Tells Georgians Constitution 'Tortured'

Post-Herald
Birmingham, Ala.
Tues. 2-19-57

FROM PRESS REPORTS

ATLANTA, Feb. 18—A well-known Southern columnist told the Georgia General Assembly today that "the United States Supreme Court has been torturing the Constituion for the past 28 years."

The speaker, John Temple Graves, said the court decision

Frankfurter, Douglas, and Clark were accused of usurping legislative powers and further charged that the justices "violated the Constitution of the United States, committed high crimes and misdemeanors and gave aid to the Communist enemies of the United States" in handing down the anti-segregation decision of May 17, 1954.

Attack On Court Is Unwise Move

Strong determination of Georgia officials and legislators to block any move toward integration in Georgia has led them into taking extreme actions and making rash statements that are putting the state in a bad light and, in the long run, may do damage to the cause of segregation.

Such is the proposed resolution calling on the Georgia delegation in Congress to initiate impeachment proceedings against six members of the United States Supreme Court, and asking "sister states" to take similar action.

If passed, it would be a declaration by the Georgia General Assembly that the named justices are "guilty of attempting to subvert the Constitution of the United States and of high crimes and misdemeanors in office, and of giving aid and comfort to the enemies of the United States."

Named in the resolution are Chief Justice Earl Warren and Associate Justices Reed, Black, Douglas, Frankfurter and Clark. The three other associate justices are not mentioned.

It is not necessary for one to agree with the Supreme Court's decision outlawing segregation in the schools, to question the wisdom or validity of the resolution that was signed by House Speaker Marvin Mote and Rep. Colbert Hawkins, Gov. Marvin Griffin's floor leader.

Georgia legislators would be wise to refrain from approving this resolution that seems to be ill-advised and uncalled for. It could do more harm than good to the cause of segregation in the South.

Should the resolution be approved, Georgia's congressional delegation should consider it carefully before becoming a party to such a patently unwise move.—Columbus Ledger.

Slippery Logic

Some critics of the Supreme Court are giving a good deal of weight to an argument against the school segregation decisions recently made by James F. Byrnes, former Justice of the Supreme Court, former Governor of South Carolina, former Senator and assistant to President Roosevelt in World War II. Mr. Byrnes argued that the Court erred in striking down segregation by judicial decree because the Fourteenth Amendment, which it invoked, reserves to Congress the power to enforce its provisions. If this could be sustained, the Court would indeed be out on a limb.

The Fourteenth Amendment is an intricate conglomeration of reforms laying many different restraints upon the states. Some of the changes sought could obviously be effected only by congressional action. For this reason the amendment concludes with the provision: "The Congress shall have power to enforce, by appropriate legislation, the provisions of this article." It is inconceivable to us, however, that the framers and supporters of the amendment intended the courts to sit idly by, ignoring the rights the amendment bestows until Congress should provide for their enforcement.

The amendment provides, in addition to equal protection of the laws, that no state shall "deprive any person of life, liberty, or property, without due process of law." Does this mean that the Supreme Court cannot save from the electric chair an accused person who has been denied a fair trial, unless Congress has passed a law for that purpose? Of course, it does not. It is the amendment itself, and not any legislation enacted under it, which creates the right to a fair trial and to equal protection. Indeed, if Congress should enact enforcing legislation incompatible with the rights established by the amendment, the Court would have an obligation to invalidate it.

The significant fact that Governor Byrnes and his supporters have overlooked is that the Fourteenth Amendment also provides that when a state denies the right to vote in any national election its representation in the House of Representatives shall be reduced accordingly. Here is a provision that can be enforced only by Congress. Sponsors of the Fourteenth Amendment wanted to leave no doubt that Congress had authority to apply this powerful weapon against disfranchisement—a weapon that could not be wielded by the courts. By failing to act under this provision, despite flagrant denial of voting rights to Negro citizens in many Southern states, Congress has made it a dead letter. Surely this does not mean that rights which can be properly enforced in the courts should be a dead letter also because Congress has failed to act.

Remember, too, that in drafting the original Constitution the founding fathers gave Congress power to make "all laws which shall be necessary and proper" for carrying out its purposes. No one interprets this to mean that rights created by the Constitution exist only on paper until Congress acts to reinforce them. It is a pity that such a flimsy argument against the desegregation decisions should have come from a former member of the Supreme Court.

To Defy Supreme Court Is 'Not Only Poor Strategy, It Is Poor Citizenship'

Richmond, Va.—To defy the U. S. Supreme Court and to persuade others to do so "is not only poor strategy, it is poor citizenship," declares a statement adopted by the Richmond Ministers' Association.

The statement, dealing with recent legislative and executive efforts in Virginia to circumvent the Supreme Court decision on public school segregation, appears in the Feb. 11 issue of The Presbyterian Outlook published here.

In a sort of credo at the end of their lengthy statement the ministers declared:

'Poor Strategy'

"Second, we believe that as Americans, we citizens of Virginia have a responsibility to respect all duly established legislative, executive and judicial authority, whether at local, state or federal levels. Obedience to this authority, where it violates no moral or religious principle, enjoins upon public officials as well as other citizenry and is not contingent upon the apparent wisdom of authority. To defy openly the Supreme Court and to encourage others to do so, in our judgment, is not only poor strategy; it is poor citizenship. Therefore, we urge our state government to act with loyalty and with maturity as regards cooperation with all established agencies of American government, and to lead us in a statesmanlike rather than an anarchistic manner.

"Third, we believe that local community rights are as vital as states rights, and that the right to govern its own school system should be returned promptly to the local and county governments.

School System

"Fourth, we believe in time that it will be possible to establish a school system satisfactory to thoughtful people of both races and to the Supreme Court of the United States.

"Fifth, . . . social custom violating the dignity of the Negro should be eradicated. The passing away of these irritating customs does not involve intermarriage or amalgamation of the races; it declares a wholesome respect for all people and evidences common courtesy."

M'Carthy to Quiz Justice Brennan On Nomination

The Senate Judiciary Committee voted unanimously yesterday to let Sen. Joseph R. McCarthy (R-Wis.) cross-examine Supreme Court Justice William J. Brennan Jr. at a public hearing today.

McCarthy had asked for the right to "examine and cross-examine" the Justice in the hearings on his nomination to the Supreme Court seat Brennan now holds under a recess appointment from President Eisenhower.

The Senator, who is not a member of the Judiciary Committee, has said he wants to inquire about the Justice's views on communism. He said Brennan in recent years had made speeches critical of some Senate investigations of communism.

Brennan was named by Mr Eisenhower to succeed Sherman Minton, who retired last year.

Supreme Court Upsets Obscene Book Law

Inquirer
From Our Wire Services

WASHINGTON, Feb. 25.—The Supreme Court today unanimously struck down a Michigan law which made it a crime to sell books deemed to contain obscene language.

Phila. 2-26-57

The law was attacked by Alfred E. Butler, a Detroit dealer who was fined $100 after selling to a police inspector a book called "The Devil Rides Outside."

The book was written by John Howard Griffin, who lost his sight from a Second World War injury and suddenly regained it last January after being blind for 10 years. Griffin's sight returned while he was working on another novel at his parents' farm at Mansfield, Tex.

Philadelphia Pa.

CURTAILS LIBERTY

Justice Felix Frankfurter, delivering today's decision, said Michigan was in effect burning the house to roast the pig in enacting the anti-obscenity law.

"We have before us," Frankfurter said, "legislation not reasonably restricted to the evil with which it is said to deal. The incidence of this enactment is to reduce the adult population of Michigan to reading only what is fit for children.

P. 5

"It thereby arbitrarily curtails one of those liberties of the individual, now enshrined in the due process clause of the 14th Amendment, that history has attested as the indispensable conditions for the maintenance and progress of a free society."

Supreme Court holds pro football is subject to antitrust laws —Story on Page 22.

JUSTICE REED HONORED

The justices concluded their heaviest opinion day in recent years by paying tribute to retiring Justice Stanley F. Reed. Chief Justice Earl Warren saluted the 72-year-old jurist, who ended 19 years on the high bench today, for a "significant contribution to American constitutional law."

The court handed down 16 majority opinions and a number of orders today. It also heard 11 dissenting opinions. Among other actions; the court:

1. Upheld, 6-3, the use by States of a "properly safeguarded blood test" to find out whether a motorist is under the influence of alcohol. Speaking for the majority, Justice Tom C. Clark said: "The increasing slaughter on our highways, most of which should be avoidable, now reaches the astonishing figures only heard of on the battlefield. The States, through safety measures, modern scientific, methods, and strict enforcement of traffic laws, are using all reasonable means to make automobile driving less dangerous."

UP Telephoto

Justice Stanley F. Reed walks through doors of the U. S. Supreme Court Building in Washington as his retirement becomes effective, ending a 19-year career on Nation's highest tribunal.

2. Agreed to clarify the relationship of the National Labor Relations Board to unions whose officers have not signed non-Communist affidavits. The court will hand down a written opinion after hearing arguments next fall. The case involved District 50 of the United Mine Workers, whose officials have never filed such an oath with the board.

3. Let stand a Pennsylvania decision which denied news photographers the right to take pictures in courthouse corridors of persons on trial. The possibility remains, however, that the case may be taken again to a Federal district court, where it has been held in abeyance pending State court rulings. Judge Edward G. Bauer of the county court issued the photo ban at the trial of John W. Wable, who was convicted as the slayer of a truck driver on the Pennsylvania Turnpike. Wable was executed Sept. 26, 1955.

4. Voted 8-0 to throw out an appeal brought by a trainman fired by the Pennsylvania Railroad in a test of its union shop contract. The trainman specifically affected, N. P. Rychlik, worked out of Buffalo, N. Y.

5. Threw out a suit by Texas against New Mexico over rights to Rio Grande water.

New judge Afro-American color blind, lawyers say

Sat. 3-16-57 Baltimore Md.

By LUCILE BLUFORD

KANSAS CITY, Mo.—"He is absolutely color blind. We believe he will take his place on the Supreme Court with Justices who rule on the right side."

That was the appraisal of Charles Evans Whittaker, newest Eisenhower appointee to the nation's highest court, offered Monday by lawyers who know him intimately.

Judge Whittaker, 56, a Republican, has been a member of the 8th U.S. Circuit Court of Appeals at Kansas City since June 22, 1956.

* * *

HE HAD been elevated from a U.S. District judgeship to which he had been appointed by Mr. Eisenhower on July 19, 1954.

His appointment Friday was to fill a vacancy created by the retirement of Associate Justice Stanley Reed.

Colored members of the bar here speak of Judge Whittaker in the highest of terms and deem him "eminently qualified for service on the Supreme Court."

While refusing to classify him as either a liberal or a conservative, they disclosed that Judge Whittaker both as a trial lawyer and later as judge "was always guided by the law and the facts. Race or color was never a factor in his rulings."

* * *

DESCRIBING him as learned, eloquent and impartial, local attorneys gave him their unqualified endorsement for the highest judicial post.

In September, 1954, Judge Whittaker addressed the National Bar Association's 29th annual convention held at the Municipal Auditorium here.

His subject was "The Philosophy and Function of a Bar Association." The address was greeted with prolonged applause by the assembled lawyers from all over the nation.

Possessed of a "legal" mind, he had passed the Missouri bar before graduating from the old Kansas City School of Law in 1924. Former President Harry Truman was a classmate.

HIS SPECIALITY since his elevation to the appellate court has been his clear, well-written opinions, one of the factors believed responsible for bringing him the nomination to the Supreme Court.

He was born on a farm 20 miles north of Kansas City. Three years after finishing the 9th grade at a country school, he moved to Kansas City to pursue his passion for the law.

Judge Whittaker, when confirmed, will make the political composition of the court, four Republicans to five Democrats.

Racial Edict Harmful But Just, Ike Aide Says

Constitution Atlanta Ga. Jan. 3-22-57 P. 2

RUTHERFORD, N.J., March 21 (AP)—Bernard M. Shanley, presidential appointments secretary, said today he thought the U.S. Supreme Court decisions banning segregation had "set us back many years" but he later termed it "a right decision."

Shanley made the remark about a setback in replying to a student's question after he made a speech at Fair-Jeigh Dickinson University here.

Shanley

To newsmen who questioned him later, he said he considered that the decision had done "incalculable harm" because of "immediate damage" but that it was only a "temporary setback" for integration.

The Bernardsville, N.J., lawyer added:

'If I were on the bench, I would have voted the same way. But there isn't any doubt that the decision did create additional feeling in the South in the steady progress toward desegregation."

He said that he was "not questioning the decision of the Supreme Court, but the decision itself unfortunately resulted in many of our colored students severing their relationships with Southern colleges and universities."

He said he considered it "a right decision."

The question that prompted the subject came from a student who asked if Shanley "considered President Eisenhower indifferent to the South as has been charged."

Shanley replied that "more has been accomplished in the past four years than in the past 20. Where any federal dollars are being spent, there can be no segregation or discrimination."

At this point he referred to the court decision.

Newsmen questioning him later asked him if he had been expressing White House policy.

He said he was expressing a personal view.

In his speech, Shanley said, "It's impossible for the President to do the things he did three years ago." He said, "I have seen the President so tired, he has rested his head in his hands."

Morning Mail
Post Herald

Let Supreme Court Follow The Law

Tues. 3-26-57

The men who wrote our Constitution intended that appointments to the United States Supreme Court be made on the basis of legal and judicial experience.

The Supreme Court justices fell into that category until the arrival of the New Deal era of F.D.R. Since then there has been an about face.

Supreme Court decisions of today, instead of being based on legal precedents or constitutional grounds, are based on the social, political, and economic whims of the justices, who have little or no regard for the rights of individuals or the laws of the states. No people who properly respect themselves or their rights can long submit to such.

On May 17, 1954, the Supreme Court could not cite one legal precedent in support of its segregation decision; however, it did refer to the writings of several psychologists, some of whom had been declared subversive by the Department of Justice.

In doing so, it repudiated the Supreme Court decision of 1896, which declared that separate but equal facilities was the law. Furthermore, the separate but equal doctrine had been upheld by the court in eight different cases since 1896.

No matter what any court may rule. there must be no integrated schools for our children. The supreme law of the land is not the Constitution as interpreted by Justice Warren & Company's socialistic theories, nor is it fixed bayonets and loaded rifles. It is the public sentiment of an overwhelming majority of the people.

We have but one of two things to do, resist or submit. The future of our race, our form of government, of America is at stake.

W. E. CRAWFORD,
Adamsville Rt. No. 1

B'ham Ala.

Senate Unit Approves Whittaker as Justice

Portland Times Herald p.2

Washington, D.C.

Judge Charles E. Whittaker of Kansas City, Mo., won unanimous endorsement of the Senate Judiciary Committee yesterday for his nomination to be an Associate Justice of the Supreme Court.

Whittaker

Confirmation now rests with the Senate, where the nomination of Associate Justice William J. Brennan Jr. of New Jersey is pending. Brennan ascended the bench under a recess appointment.

Whittaker's nomination was supported by Missouri's two Democratic Senators, Thomas C. Hennings Jr., and Stuart Symington. Whittaker will succeed Justice Stanley F. Reed, retired. He is a Republican. Brennan is a Democrat.

The Committee also approved these nominations:

W. Wilson White of Pennsylvania to be Assistant Attorney General.

M. Hepburn Many of Louisiana to be United States District Attorney for Eastern Louisiana.

Donald C. Moseley of Louisiana to be United States Marshal for Western Louisiana.

8-A, 3-19-57

High Court Okeys Cafe, Pool Rulings

Afro-American Sat. 4-13-57 Baltimore Md.

p. 3/2 d

WASHINGTON (NNPA) — The U.S. Supreme Court last Monday refused to review two decisions of the U.S. Fifth Circuit Court of Appeals at New Orleans outlawing racial discrimination in the use of a courthouse cafeteria and a bathing pool and beach in southern localities.

The court's refusal to review leaves in effect decisions that colored persons must be served in the Harris County Courthouse cafeteria at Houston, Texas, and must be permitted to use Spa pool and bathing beach at St. Petersburg, Fla., without segregation.

In the Houston case, suit was brought in the Federal District Court to enjoin the Harris County Commissioners' Court and W. F. (Dee) Derrington from barring colored persons from use of the cafeteria in the county courthouse.

The plaintiffs were M. W. Plummer, George Nelson, James M. Roberts and Mrs. Lillie M. Alonzo.

* * *

SPACE IN the courthouse for the cafeteria was leased to Derrington. Meals and soft drinks were served there to the general public and about 1,000 employees of the Harris County.

The plaintiffs went into the cafeteria on Aug. 27, 1953. Derrington informed them that the cafeteria did not and would not serve colored people.

The Federal District Court ruled that Harris County cannot constitutionally deny colored persons the right to patronize the courthouse cafeteria.

The county was enjoined from renewing or extending its lease with Derrington, or executing a new one or otherwise divesting itself of management and control of the premises without specific assurances that the facilities would be open to colored persons without discrimination.

The Court of Appeals affirmed the decision, holding that Derrington stood in the place of the county and his conduct was state action.

* * *

IN THE St. Petersburg case, Fred Alsup, Willet Williams, Naomi Williams, Ralph Wimbish, Chester James Sr., and Harold Davis sued in the Federal District Court for the Southern District of Florida.

The court enjoined the city from refusing to allow them and other colored persons similarly situated from using the Spa pool and bathing beach operated by the city through Jack Puryear, its director of recreation. The Court of Appeals upheld the decision.

The city contended, in its petition for review, that it operated the pool and beach as a business, charging a fee for admission, and is financially unable to operate this utility at a loss.

It also said it had operated a colored pool in the heart of the colored area at a considerable financial loss and was finally forced to close it for lack of patronage.

It also stated that due to long social practice and custom, if colored persons were admitted to the beach and pool, whie patronage would cease and the city would be forced to close the pool because of insufficient funds.

* * *

IN PASSING on these points, the Court of Appeals said:;

"If these contentions were accepted, the Constitution would operate with different effects in Maryland and in Florida.

"In two cases involving Baltimore and Maryland parks and swimming pools, Federal courts decreed that colored people had to be admitted without segregation or discriminatin."

"Financial loss cannot justify illegal operation," the court said. "and, unfortunate as closing the pool may be, that furnishes no ground for abriding the rights of colored people."

Roscoe Drummond

Constitution Atlanta Ga.

The Supreme C[illegible] Safeguards Lib[illegible]rty

Sat 2-16-57

WASHINGTON—Nearly every President has had to defend his constitutional powers from congressional encroachment. Eisenhower had a hard time keeping his authority to police the federal personnel from slipping into the hands of eager congressmen. Nearly every Congress has had to defend its independence—sometimes not too successfully—from presidential encroachment.

p. 4

For a considerable period during Franklin Roosevelt's administrations Congress was more a subordinate than a coordinate branch of the government.

It seems to me it's time somebody raised a voice to defend the third branch of government, the United States Supreme Court. The President can defend himself. Congress can defend itself. But the justices of the Supreme Court, speaking only through their opinions, can never speak in their own behalf.

The court is today the target of controversy because of its opinions on racial questions even as it was the target of controversy 20 years ago when it was striking down some of the early New Deal legislation as unconstitutional.

Criticism of the court's rulings is desirable. The legal opinions of judges should be no more sacrosanct than the political opinions of politicians. That the opinion of the Supreme Court is legally final does not make it infallible; it isn't.

But criticism of the authority of the Supreme Court seems to me dangerous.

The Constitution does not spell out the precise role the Supreme Court shall play. It remained for the court itself to define its function and it was largely through the force and cogency of the opinions of Chief Justice John Marshall that the court established itself as the interpreter of what laws. state and federal, are constitutional and what laws are not.

When some deeply resent a decision of the court, they often attack the jurisdiction of the court. But the fact remains that while the court originally asserted its role as interpreter of the Constitution, no action has ever been taken, either by Congress or by the people, to alter or restrict its authority one iota.

Such a course has been open to us for nearly 150 years but the jurisdiction of the court remains untouched.

Above all else the court does two things:

It prevents the federal government and the state governments from encroaching upon each other, thus preserving the balance of our federal system.

It protects the constitutional liberties of all the people from encroachment by either the states or the federal government.

The quality of President Eisenhower's appointments to the Supreme Court contributes to its continued strength.

With the retirement of Justice Stanley F. Reed, Eisenhower has now to make his fourth appointment to the high bench in four years. In naming Chief Justice Earl Warren, Justices John M. Harlan and William J. Brennan Jr., he has set a high standard.

If the President decides to go outside the judiciary for his nominee, it is not at all unlikely that he'll name Atty. Gen. Brownell.

12d 1957

SUPREME COURT
JUDGE CHARLES E. WHITTAKER

New Justice Began Saving His Money As Farm Boy to Get Law Education

Post and Times Herald Sun. 3-3-57
Washington, D.C.

By Joe Henderson
Kansas City Star Reporter

KANSAS CITY, Mo., March 2—Judge Charles E. Whittaker's rise from a Kansas farm boy to the Nation's highest court may have been a surprise to some members of the American judiciary but not to those who have been associated with the hard-working lawyer.

Charlie Whittaker has been "law struck" since he was a boy. The $700 to $800 he saved as a farm boy running an early morning trap line during his elementary school years was the foundation of a law education.

On that was built a lustrous professional career. At the time he was appointed to the bench he was regarded as one of the outstanding trial lawyers of the state.

Began as Office Boy

In a career exceeding 30 years, Whittaker has debated cases in courts ranging from police courts to the United States Supreme Court and from Maine to California.

He was born on a farm 20 miles north of Kansas City. Three years after finishing nine grades at a country school, Whittaker moved to Kansas City to follow the law.

Whittaker got his first taste of the law as an office boy in the firm of Watson, Gage and Hess. By working days and going to school nights he was graduated from the old Kansas City School of Law in 1924. However, he had already passed the Missouri bar examination a year before.

In 1930 he was made a junior member of the firm and two years later his name was added to the firm title. Charlie Whittaker was on his way to the top. When he was appointed to the District Court he was the second ranking member of the firm in seniority.

He was sworn in as a District Judge on July 19, 1954. He received the oath from the man he succeeded, Judge Albert L. Reeves, who retired after more than 30 years on the bench.

Cleared Docket

Judge Whittaker soon impressed lawyers and federal employes alike with his devotion ta hard work. The docket which had become congested with back work during the period from the retirement of Judge Reeves to Whittaker's appointment soon was cleared.

He disposed of motions as rapidly as they weer filed. His atcions in the courtroom soon won the admiration of the lawyers who practice in his court.

On June 22, 1956, Judge Whittaker was elevated to the United States Court of Appeals, Eighth Circuit, to succeed the late Judge John Cakie Collet.

He carried his working habits with him to the Court of Appeals and decisions were always among the first to be written. He was credited with clearing the backlog of work in the Eighth Circuit.

Less than one year after his appointment to the Circuit Court, Judge Whittaker was nominated for the Supreme Court.

"Misses" Trial Courts

At the time of his appointment to the Court of Appeals, Judge Whittaker commented that he was going to miss the activity of the District Court.

"I am moving up to the Court of Appeals with mixed emotions," he observed.

"During my two years on the bench I have had to keep a rein on myself to keep from joining in with the lawyers trying the ease. I will miss the personal contact with the lawyers that a trial judge in the District Court has," he added.

Attorney General Herbert Brownell Jr. has remarked that no appoitment he has made has received such widespread endorsement as the naming of Whittaker to the Federal Courts. Democrats and Republicans both have hailed his selection.

Judge Whittaker was elected to the Board of Governors of the Missouri Bar Association in 1948, became secretary in 1951 and vice president in 1952. When he was appointed to the District Court he was president of the Missouri Bar.

He is a member of Phi Alpha Delta, law fraternity; the American Bar Association, and the Lawyers Association of Kansas City.

Judge Whittaker is a member of the board of trustees and boad of stewards of the Central Methodist Church.

He and his wife, Winifred, have three sons. The eldest is Dr. Keith Whittaker who is an intern at the General Hospital in Kansas City and who already has received his commission in the Air Force. Kent is a student at Dartmouth College Law School. Gary, the youngest, is a senior at Rockhurst High School an dwill be graduated in May.

Missourian Picked for High Court

Post and Times Herald Sun. 3-3-57
Washington, D.C.

Charles Whittaker President's Choice For Seat Vacated By Justice Reed

Picture and Sketch, Page A-14

By Bernard D. Nossiter
Staff Reporter

Charles Evans Whittaker, 56, of Kansas City, Mo., was tapped yesterday by President Eisenhower for a vacant Supreme Court seat.

A Republican, Whittaker has had a rapid rise in the Federal judiciary. Mr. Eisenhower picked him for a United States District Court judgeship in 1954 and promoted him to the Eighth Circuit Court of Appeals last June.

After seeing the President yesterday, the former Kansas City lawyer told reporters Mr Eisenhower had said he had selected him because "my long and active experience as a trial lawyer, then as a trial judge and my experience as an appellate judge admirably qualifies me as a Supreme Court Justice."

If the Senate approves him, he will succeed Associate Justice Stanley F. Reed who retired last Monday. The Senate still must pass on another recent Eisenhower nominee for the Supreme Court, William J. Brennan.

Eisenhower's Fourth

Whittaker is Mr. Eisenhower's fourth Supreme Court pick. Besides Brennan, a Democrat, the others were Chief Justice Earl Warren and John M. Harlan.

The latter two are Republicans. Thus, the 6-3 Democratic majority that prevailed on the court before Reed stepped down is now reduced to 5-4.

Whittaker was born in Troy, Kans., on Feb. 22, 1901. He started his legal career as an office boy in a Kansas City firm in 1921. By 1954, when he moved to the Federal bench, he was second-ranking partner in the same office, now called Watson, Ess, Whittaker, Marshall and Enggas.

This firm defended the Kansas City Star from criminal antitrust charges. The newspaper was convicted and the case is now on appeal to the Supreme Court. Whittaker, presumably, would disqualify himself from considering it.

Class Ahead of Truman

A 1924 graduate of the Kansas City Law School, he was a class ahead of former President Truman. Whittaker, who told reporters he had never been "active" in Republican politics, said he had known Mr. Truman "for many years."

Both Missouri Senators, who are Democrats, expressed approval of Whittaker's nomination.

The President's Fourth Supreme Court Appointee

Daily World Tues. 3-5-57
Atlanta Ga. P. 6

In naming Judge Charles Evans Whittaker, Kansas City Circuit Judge for the Supreme Court vacancy left by the resignation of Justice Stanley Reed, President Eisenhower made his fourth appointment to the High Court—three Republicans and one Democrat. 12d

It will be recalled that under the late Franklin D. Roosevelt, the court as far as political parties were concerned became greatly unbalanced.

The appointment of Judge Whittaker seems to be a universal choice; his having had much previous experience on the bench, would conform with the contention of some who, for one reason or another, have complained about the lack of judicial experience coming to the bench.

Judge Whittaker, coincidently, bearing the Christian name quirements for the court, and it has been widely predicted that he will encounter no obstacles in taking up this much envied role of a judicial career.

Judge Whittaker, coincidently, bearing the Christian names of the late Chief Justice Charles Evans Hughes, will make an interesting contribution to the bench. His name no doubt will refresh the memories of those who looked with much admiration in another generation to the late Chief Justice, who left the court to run for the Presidency of the United States only to be beaten by the late President Woodrow Wilson. 12d

While it has been stated, according to his record, he might be classed as a middle-of-the-roader, it also bids fair that he will be among the celebrated liberals, who seek to keep the courts in tune with a progressive era.

Sun. 3-3-57 Associated Press
CHARLES E. WHITTAKER
... High Court nominee

Associated Press wirephoto
Charles Evans Whittaker at the White House yesterday.

Whittaker, a U. S. Judge, Named to Supreme Court

By James E. Warner

WASHINGTON, Mar. 2.—Charles Evans Whittaker, fifty-six, a veteran trial lawyer and now a judge of the United States Circuit Court of Appeals at Kansas City, Mo., today was nominated by President Eisenhower as an associate justice of the Supreme Court.

A Republican, although he never has taken part actively in politics, and a Methodist, Judge Whittaker is the fourth member of the Supreme Court to be appointed by President Eisenhower, whose next preceding appointment was that of Judge William J. Brennan jr., a Democrat and a Roman Catholic.

When Judge Whittaker takes his seat on the bench—there was every indication today that he will be promptly confirmed by the Senate—the court's political lineup will be five Democrats and four Republicans. Prior to the February 25 retirement, at seventy-two, of Associate Justice Stanley F. Reed, whose place Judge Whittaker will take, the political division was six to three in favor of the Democrats.

The White House announced the appointment after Judge Whittaker had conferred with the President, and later sent the nomination to the Senate, where the only immediate comment was extremely favorable.

Judge Whittaker was introduced to reporters after his conference with the President by Murray Snyder, acting White House press secretary, and answered questions in an impromptu news conference.

Asked what the President had told him, Judge Whittaker, who today received his third judicial appointment from Mr. Eisenhower in as many years, replied:

"The President said he felt my long and active experience as a trial lawyer, then as a trial judge, followed by experience as an appellate judge, admirably qualified me as a Supreme Court justice."

Judge Whittaker was appointed to the United States District Court for the Western District of Missouri in July, 1954, when he was a partner in the law firm of Watson, Ess, Whittaker, Marshall & Engass. He had started with that firm as an office boy in 1921, three years before he took his law degree from the University of Kansas City Law School.

Last June 5 he was appointed by Mr. Eisenhower to the 8th Circuit Court of Appeals, which covers Minnesota, Iowa, Arkansas, Missouri, Nebraska, North Dakota and South Dakota.

Under reporters' questions, Judge Whittaker, a slightly built man with a ready smile, said he had received the first news of his appointment only this morning from the President, although he had an inkling of what might be in the wind when Attorney General Herbert Brownell jr. telephoned him Thursday evening and asked him if he could come to Washington that night.

His highly excited wife met him at the garage door when he drove home that evening, he said, and told him the Attorney General was trying to reach him by phone.

"As soon as I calmed down a bit—and it was hard to do because I was aware of the possible implications—I answered the call," the judge said with a smile, adding the next he heard was an operator saying "the White House."

Plane Delayed by Snow

Mr. Brownell told him that he was prepared to make a recommendation to the President "or had already done so," Judge Whittaker said. He did not recall that the Attorney General mentioned the Supreme Court, but he said "that was needless."

The Attorney General, he related, said he supposed it was "not reasonable" to expect the judge could come to Washington that (Thursday) night.

"I said it was entirely reasonable to expect that I could," Judge Whittaker said. With some difficulty, he got aboard a plane for New York early Friday, but was delayed there by snow, and did not reach Washington until about 2 p. m. yesterday.

A native of Troy, Kan., Judge Whittaker has a 160-acre farm about twenty miles north of Kansas City, and his hobby, he said, is walking around the place looking over his cattle.

Both Missouri Senators, who are Democrats, applauded the nomination, Sen. Stuart Symington taking the floor to praise Judge Whittaker as being "highly thought of by all Missourians especially among the bar."

Sen. Thomas C. Hennings recalled that he had strongly supported Judge Whittaker's prior nominations to the district and circuit benches and added:

"I shall do everything within my power as a member of the Senate Judiciary Committee to see that Judge Whittaker's nomination for the Supreme Court is approved without delay."

Judge Brennan's nomination also still is pending before the Senate.

Active in the law for thirty-three years, Judge Whittaker is known in the profession as "a lawyer's lawyer," a reputation he cherishes. He was president of the Missouri Bar Association when he was first appointed to the bench, and also is a member of various other legal groups.

Married since 1929, Judge and Mrs. Whittaker, the former Miss Winifred Pugh, have three sons, Keith, twenty-four, Kent, twenty, and Gary, sixteen.

COURT'S SANCTITY NOT INTEGRATION

Ike Says Courts' Sanctity, Not Integration, Is Issue

Constitution Atlanta, Ga.
Fri 10-4-57 p. 1

By ANTHONY LEWIS

(Copyright 1957 by The New York Times Co.)

WASHINGTON, Oct. 3—President Eisenhower said today that the issue in Little Rock is not school segregation but the sanctity of the courts, "our bulwarks, our shield against autocratic government."

"The courts must be sustained or it's not America," the President said.

This was the principal theme of a press conference devoted almost entirely to the school segregation problem. The President discussed both the particular issues in Little Rock and the broader question of how the South as a whole can be persuaded to comply with the Supreme Court's school decision.

The Little Rock dispute itself remained at dead center today. There were no further developments on the abortive peace plan drawn up by Eisenhower and four Southern governors Tuesday to get federal troops out of the city and restore the federalized Arkansas National Guard to state control.

The President said at his press conference that "two different situations could justify the withdrawal of federal troops."

The first, he said, would be "unequivocal assurances" by Gov. Orval Faubus of Arkansas that court orders would not be obstructed and law and order maintained in Little Rock. The Southern governors' peace plan broke down because the White House regarded a statement of assurances by Faubus Tuesday night as inadequate.

Constitution

PEACEFUL CONDITIONS

Second, Eisenhower said, troops could be withdrawn if conditions in Little Rock became so peaceful that local police would be able to handle any problems.

Atlanta Ga.

But the President made it clear that neither of these alternatives was in sight at present. He said he saw no practical method at the moment except use of federal troops to assure the continued attendance of nine Negro children at Central High School.

10-4-57

At one point, discussing his own role in persuading the South to comply with school integration orders, he said:

"The leadership of the White House can be exercised only, as I see it, through giving the convictions of the President and exhorting citizens to remember America as well as their own private prejudices."

THESE APPROACHES

It was precisely these approaches that the President used at the press conference.

After answering an opening question about Little Rock, he volunteered a further statement bringing in his view that the essential is the obligation to obey court orders.

"The troops are not there as a part of the segregation problem," the President said. "They are there to uphold the courts of the land . . . the courts in whose hands are all our freedoms and our liberties, our protection against autocratic government."

"If we can with impunity defy successfully the orders of the court in one regard," he added, "we can in all regards . . . These courts are not here merely to enforce . . . integration. These courts are our bulwarks, our shield against autocratic government."

HIS RELUCTANCE

The President emphasized his own reluctance to use troops at Little Rock or anywhere in the South. But he made equally plain his feeling that his office obligates him to use whatever force is necessary when court orders are resisted.

"No one can deplore more than I do the sending of federal troops anywhere," he said.

"It is not good for the troops; it is not good for the locality; it is not really American, except as it becomes absolutely necessary for the support of the institutions that are vital to our form of government."

The President reiterated what he has often said in the last few years—that only by persuasion, not by legal compulsion, can school integration be made to work.

HEARTS AND MINDS

"You have got to win the hearts and minds of men to the logic and the decency of a situation before you are finally going to get real compliance," he said.

"I believe that moderation, decency, education has got to go hand in hand with any kind of just sheer application of law in this case."

The President said the process of persuasion and education would work if Southern leaders preached the necessity of obeying even unpopular laws.

SPECIAL RESPONSIBILITY

He said churchmen of the South have "a special responsibility for supporting the institutions of free government because, conversely, it is only free government where there is freedom of worship. . . ."

Eisenhower spoke especially warmly of the four Southern governors who met with him Tuesday, Luther H. Hodges of North Carolina, Frank Clement of Tennessee, LeRoy Collins of Florida and Theodore R. McKeldin of Maryland.

All of the group except McKeldin are personally opposed to school integration but have engaged to support court orders. The President said they "excited my admiration as citizens who wanted to do their duty even when disagreeable."

AID PROGRAM RIDER

Times-Union Fri. 7-12-57 Jacksonville, Fla.

Foreign Trials Ban Move Is Planned

WASHINGTON, July 11 (AP)—A House battle began shaping up tonight to add to President Eisenhower's new foreign aid bill a prohibition against foreign court trials of U.S. servicemen.

The move developed in the wake of the Supreme Court's decision in the case of GI William S. Girard. The court upheld the legality of a decision by U.S. officials to turn Girard over to the Japanese government for trial on a manslaughter charge.

Rep. Bow (R-Ohio) said he was studying Eisenhower's $3,242,333,000 foreign aid measure "to see where an amendment might be offered." The aid bill was cleared by the Rules Committee today for House consideration starting Monday.

Need Urgent

Bow said the Supreme Court decision in the Girard case "makes it even more urgent" that Congress act on his resolution aimed at preventing the prosecution of U.S. servicemen in foreign courts.

Rep. Wayne Hays (D-Ohio) predicted that Bow's resolution, which has been bottled up in the Rules Committee, "will be put on as an amendment" to the foreign aid bill.

The resolution is opposed by the Eisenhower administration, whose spokesmen contend its adoption would force the recall of U. S. forces from all parts of the world.

If the House and Senate should vote to incorporate it in the foreign aid bill, Eisenhower would be faced with the dilemma of having to accept it or veto the whole bill.

The Supreme Court decision brought these other repercussions:

1. Rep. Ayres (R-Ohio) introduced a bill calling for a "full and complete" investigation of the Girard case.

2. Sen. Thurmond (D-SC) said he would press for adoption of his resolution putting Congress on record as being opposed to the surrender of any U. S. servicemen to foreign courts for trial.

3. Sen. Holland (D-Fla) predicted the Senate will give serious consideration to some form of the treaty-limiting amendment proposed by Sen. Bricker (R-Ohio), particularly one that would prohibit executive agreements, not ratified by the Senate, from superseding "constitutional rights."

Administration spokesmen generally expressed satisfaction with the high court decision, but many members of Congress were sharply critical. Among these were several Southern senators who have been angered by the court's actions in racial desegregation and other cases.

Sen. Russell (D-Ga), leader of the Southern fight against the administration's civil rights bill, said "This is another decision of the Supreme Court with which I do not agree."

He said Girard "has been cast

Jap Trial of Girard Is Ruled Constitutional by High Court

(Continued from Page 1)

is done only in minor issues or where there is no disagreement.

The court noted that Japan and the United States signed a security treaty Sept. 8, 1951, and that it was ratified by the Senate on March 20, 1952. Under this treaty, the two countries made an "administrative agreement" governing trials of U.S. servicemen.

However, the court noted that the administrative agreement became effective on the same date as the security treaty "and was considered by the Senate before consent was given to the treaty." Therefore, it said, the Senate approved signing of the agreement that figured in the Girard case.

The court's decision overturned a ruling by Federal District Judge Joseph C. McGarraghy that the government had no legal right to turn Girard over to Japan because his alleged offense was committed on duty. Girard's attorneys claimed the U.S. action violated his "constitutional rights."

The government argued successfully that American soldiers take overseas only those constitutional trial rights which the foreign country specifically grants them—or which are provided for in status-of-forces agreements between the two nations.

The Supreme Court pointed out that it decided many years ago that "a sovereign nation has exclusive jurisdiction to punish offenses against its laws committed within its borders, unless it expressly or impliedly consents to surrender its jurisdiction."

Thus the court overturned McGarraghy's ruling in favor of a court-martial for Girard, but upheld his denial of a writ of habeas corpus which would have forced the government to bring Girard back to this country, out of reach of the Japanese.

The marble - pillared courtroom was about two-thirds full of tourists and a large group of government attorneys when the tribunal handed down its decision. They listened intently while the opinion was read by Chief Justice Earl Warren.

Hailed in Japan

TOKYO, Friday, July 12 (UP) Japanese officials today welcomed the U.S. Supreme Court decision turning GI William S. Girard over to Japan for trial.

Japanese roused from bed to receive the news, which reached here shortly after midnight, unanimously agreed the decision would help remove hard feelings aroused in Japan by the case.

Girard's Army legal adviser, Maj. Stanley F. Levin, said he did not think the soldier would be disappointed by the decision. "Speaking for myself," he said, "this is how I thought it would come out all along."

Maebashi Court Judge Yuzo Kawachi, who will hear the Girard case, said the trial will start Aug. 26. Japan has continued preparations for the trial on grounds that any decision by the U.S. court would not be binding on Japan.

"I welcome the U.S. court's decision and I am in complete agreement with it," Kawachi said.

Virginia's Segregation Law Killed

Supreme Court Refuses Review

By Earl Mazo

WASHINGTON, Oct. 21.—Without uttering a word, the Supreme Court today took another swing at racial segregation in public schools.

It refused, without comment to review a lower court decision that Norfolk and Newport News, Va., integrate their schools. Thereby it upheld Federal Court Judge Walter E. Hoffman's ruling which killed Virginia's intricate pupil placement plan. The plan provided for a three-member board in Richmond to determine the school every pupil in the state should attend. This board carefully separated the white from the Negro.

Officials of other Southern states had hoped this plan would be the legal way to prevent integration. In Tallahassee ,the Florida Attorney General's office stated hopefully that the court decision didn't affect Florida's Virginia-like plan.

While the scheme was the cornerstone of the "massive resistance" program pushed to enactment last year by Sen. Harry F. Byrd's powerful Democratic machine, its downfall does not automatically open Virginia's white schools to Negro pupils.

The Byrd program has two other features: a law cutting off state funds to any locality that integrates, and another law allowing Gov. Thomas B Stanley, an important cog of the Byrd political machine, to close any classroom or school in which desegregation is permitted to take place.

An official for the National Association for the Advancement of Colored People indicated no time would be wasted in testing the constitutionality of these laws.

It was not certain, however, when Negro children actually would enter any white schools either in Norfolk or Newport News, or in Arlington and other communities where the integration orders of Federal courts have been held up pending the Supreme Court's action on the Norfolk-Newport News cases.

The high court's action was almost certain to have an impact on Viriginia's election for Governor next month.

Since the Democratic campaign has been based largely on promises to prevent desegregation and expressions of pride in the "massive resistance" program, Republicans felt the court decision will bolster their chances. Those once-rosy Republican chances dropped decidedly when President Eisenhower ordered Federal troops into the integration crisis at Little Rock.

State Sen. Theodore Roosevelt Dalton, the Republican candidate for Governor, sent a telegram to his Democratic opponent, J. Lindsay Almond, immediately after the court action was announced today.

The Republican candidate urged his Democratic opponent to join him in asking Gov. Stanley to call an immediate special session of the legislature to enact a locally administered plan which Sen. Dalton has proposed as the only legal way to keep courts from ordering all schools in Virginia integrated.

Dalton Plan

The Dalton plan would have the school board in each community handle the assignment of pupils. The rights of communities to handle their own school affairs had been taken away by the state through its now-illegal pupil assignment act.

Although Sen. Byrd and the Byrd machine campaigners have painted Sen. Dalton as an "integrationist," the Republican candidate has insisted he is a staunch proponent of segregation.

In fact, Sen. Dalton predicted in at least half his campaign speeches that the Democratic "massive resistance" program would be thrown out by the courts—as its key provision was today.

The Republican candidate charged it thus was really a "massive folly" plan, since it would lead to "massive integration" of Virginia schools.

Mr. Almond, formerly State Attorney General, insisted the court action hadn't caused him to change by "one iota" his devotion to the "massive resistance" program.

"After Little Rock, I'm not surprised at anything," snapped Mr. Almond, in an obvious dig at the Supreme Court.

It is known, however, that Virginia Democratic leaders had hoped the Supreme Court would withhold any ruling until after the election.

INTEGRATION IS GAINING AT THE COLLEGE LEVEL

Memphis Ruling Stresses Advances In Tax-Supported Institutions

By JOHN N. POPHAM
Special to The New York Times.

CHATTANOOGA, May 25—The United States Supreme Court this week gave fresh focus to what in broad terms constitutes the most successful school desegregation experience in the country.

Although the high court concerned itself with an individual case of limited scope, its action spotlighted the racial integration programs of tax-supported college campuses, where more has been accomplished with less trouble than in any other area of educational controversy.

For some time the elementary and high school desegregation problem has overshadowed the issue because of the furor this aspect has engendered in state legislatures and political arenas, along with occasional acts of violence.

True enough, one of the most widely publicized unleashings of malevolent moods by hate-inspired crowds concerned the college classroom integration case of Miss Autherine Lucy at the University of Alabama some sixteen months ago.

Wide Success

Actually, the Alabama incident was the only major misfiring in a whole range of graduate and undergraduate integration successes that have brought some 3,000 to 4,000 Negro students into formerly all-white institutions of higher learning. Moreover, the Alabama case developed long after a score or more colleges in Southern and border states had opened their doors to Negro enrollment.

Furthermore, Alabama is one of five Deep South states that have resisted any integration from elementary grades through graduate training. The solidification against any and all compliance with court-ordered desegregation in these states is geared to the theme that no hole in the dike is allowable.

The various dimensions of college level integration were brought to the fore last Monday when the Supreme Court refused to review a lower court's ruling that Memphis State College had no right to limit admissions on the basis of color or race.

Program Rejected

In substance, the high court rejected the Memphis school's adherence to a state-promulgated "stair-step" program for integration beginning with the senior year. The suit was brought by five Memphis-area Negroes seeking admission as freshmen. The lower court had pointed out that the school's plea that it was "tremendously overcrowded" could be resolved by reducing or eliminating out-of-state admissions.

Tennessee's stair-step integration policy applies to six of the seven state-supported colleges. The University of Tennessee operates under its own Board of Trustees and has yet to adopt a full desegregation program, but it does have some thirty Negro students enrolled at the graduate level.

Memphis is the commercial hub of west Tennessee, east Arkansas and north Mississippi, all areas with high Negro population ratios. On the matter of race relations, Memphis is much more closely oriented to the mood of Mississippi than to the whole of Tennessee.

It was the west Tennessee political leadership that led the move in the State Legislature this year to stiffen official attitudes on school integration after riots had marked the successful integration of eight Negro high school students at Clinton, in east Tennessee, last fall. It was widely held that the Memphis tensions had largely motivated a "go slow" approach at Memphis State College despite the limited but successful integration experiences in other parts of the state.

Generally, this has been the picture throughout the Southern and border states. The all-out resistors — Alabama, Georgia, Mississippi, South Carolina and Florida—have had public school controversies intensified to a greater extent than that of neighbor states so that a "hold the line everywhere" policy has prevailed.

Easy Integration

Yet the variations of reaction within the framework of the pub-school controversy underscore the ease with which the college level desegregation takes place. This is true notably in Virginia, where the official state line is "massive resistance" to any and all public school integration, but where four of the ten publicly supported colleges, formerly all-white, now have Negro students.

North Carolina has Negro students at the state university in Chapel Hill, the state college in Raleigh and the women's division at Greensboro. Texas has 148 Negro students at the state university and 150 in about fourteen junior colleges. Arkansas has had college student integration since 1948, Oklahoma since 1948 and Kentucky since 1950.

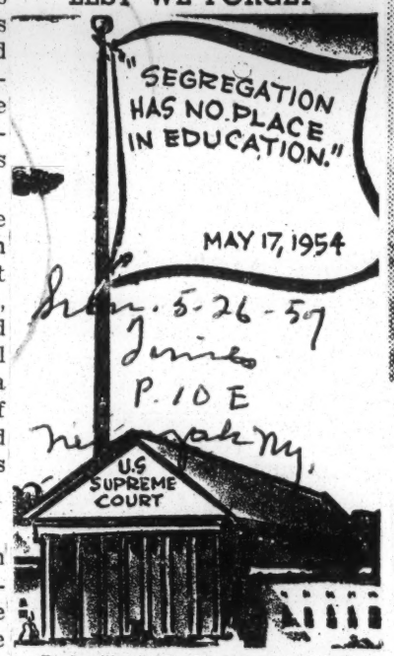
What all this seems to mean is that college-level desegregation is a marked success in terms of campus life, but a slow-down process will characterize its role in the Southern states where it is permitted. Because of the Negro's low-income status and the inadequacy of his secondary schooling little difficulty is expected in keeping Negro enrollments to a minimum while the climate is touchy.

Many of the area's keenest observers of the college level desegregation experience hold that the record to date clearly refutes the warning of white-supremacy exhorters that Negro students would "swamp the campus."

Quality Education

These observers say that an open-door policy with high admission standards for all applicants would result in a modicum of Negro enrollment. They cite the secondary school and higher costs inhibitions and also contend that once the non-discriminatory principle is established many of the Negro students will take cognizance that some of the topflight Negro colleges, with firmed up interracial faculties and doors opened to talented white students, can provide quality education not available in some of the local all-white colleges.

'LEST WE FORGET'



Partymiller in The York Gazette & Daily

Admitted to High Court—Attys. John H. Wrighten, left, of Charleston, S. C.; Myrtle B. Stryker, center, Assistant Attorney General of the State of Illinois, and Keesler H. Montgomery, Assistant Attorney General of Massachusetts, are shown shortly after they were admitted to practice before the U. S. Supreme Court.—Cabell Photo.

Five Chosen to Write History of High Court

WASHINGTON, June 15 (AP)—Five distinguished professors were chosen today to write the history of the United States Supreme Court.

They will meet here Monday with Paul A. Freund, of the Harvard Law School, editor-in-chief of the project, and Quincy L. Mumford, Librarian of Congress, to outline plans for the work. The appointees and their writing assignments thus far are:

ALEXANDER M. Bickel, associate professor of Yale Law School, Responsible Government and the Judiciary, 1910-'30.

CHARLES FAIRMAN, professor of law at Harvard University, reconstruction and Reunion, 1864-'88.

JULIUS GOEBEL jr., professor of law at Columbia University, Antecedents and Beginnings, 1787-1801.

PHIL C. NEAL, professor of law at Stanford University, Palo Alto, Calif., National Expansion and Economic Growth, 1888-1910.

CARL B. SWISHER, professor of political science at Johns Hopkins University, Baltimore, the Taney period, 1836-'64.

The John Marshall period—1801-'35—will be assigned later.

The work, in at least seven volumes, was authorized by Congress in 1955. It will be financed by money provided by Congress, plus a personal re-

quest to the government by the late Justice Oliver Wendell Holmes.

'PROFILE OF WEEK'

Advertiser P.1

Justice Hugo Black Lauded By London's Daily Worker

Sun. 6-23-57 Montgomery, Ala.

LONDON, June 22 (AP)—London's Communist Daily Worker praised U.S. Supreme Court Justice Hugo Black today in the newspaper's "Profile of the Week." The unsigned short biography of Black said:

"Victims of McCarthy during America's dark years of prejudice and persecution have been consistently defended by Justice Hugo Lafayette Black . . .

"Unknown Negroes, the tragically well-known Rosenbergs, aliens and deportees, radical professors, trade unionists and Communist leaders have heard the voice of Justice Black speak out for their rights as laid down by the American Constitution."

The paper quoted from a number of Black's decisions and underlined that he "wanted all 14" Communists acquitted in the Supreme Court's decision this week to free five and send for retrial nine convicted California Communists.

"What sort of man is this," asked the Daily Worker, "who for 20 years on three Mondays a month hands down judgments on appeals on every conceivable point of law, and whose dissenting opinions on behalf of the rights of man will remain longer in men's minds and more thumbed in the law books than many majority opinons?"

JUSTICE BLACK
Praised by Reds

The Daily Worker said he was named Hugo after "the great French radical writer Victor Hugo whose book his mother was reading when he was born."

It said Black joined the Ku Klux Klan "as a Southern lawyer seeking advancement in politics," and that opponents of Franklin Roosevelt's New Deal exploited his membership in the Klan from which he resigned.

"A lesser man would have been destroyed," said the Communist party organ, "but Black calmly rode the storm and remained to write court opinions, which show him as the champion of every human right denied by the Klan."

The paper praised him for expressing "advanced views" in which he "consistently placed the individual rights and social good before legal precedent and the interests of corporations.

"He was particularly hated by big business men because of the investigation he conducted into their lobbying activities."

The 600-word profile concluded:

"In the postwar years, when communism and work for peace has been treated as treason, Truman in his turn created a Supreme Court that permitted the government to whittle the civil liberties of those charged with subversion.

"But Justice Black stood fast. He called for America to be a beacon of liberty and a champion of peace."

Here is the complete text of the London Daily Worker's story on Justice Black:

Victims of McCarthy during America's dark years of prejudice and persecution have been consistently defended by Justice Hugo LaFayette Black, 71-year-old judge of the United States Supreme Court.

Unknown Negroes, the tragically well-known Rosenbergs, aliens and deportees, radical professors, trade unionists and Communist leaders have heard the voice of Justice Black speak out for their rights as laid down in the American Constitution.

No matter how much he disapproved, nor how many powerful politicians denounced, what Communists and other had to say, Justice Black was always ready to defend their right to say it.

When Chief Justice Vinson ruled against the eleven Communist leaders in 1951, Justice Black strongly dissented. He argued that the fathers of the Constitution believed that "the benefits derived from free expression were worth the risk."

He denounced the charges as "virulent form of censorship of press and speech." Concluding his dissenting opinion, he said: "There is hope that this or some later court will restore the First Amendment liberties to the high preferred place where they belong in a free society."

Advertiser Page

The majority decision of the Supreme Court this week to free five and send for trial nine of the convicted Californian Communist leaders brings the dawn of that day nearer. And by a curious twist, Justice Black was in the dissenting minority because he wanted all 14 acquitted.

What sort of a man is this, who for 20 years on three Mondays a month hands down judgments on appeals on every conceivable point of law, and whose dissenting opinions on behalf of the rights of man will remain longer in men's minds and more thumbed in the law books than many majority opinions?

Hugo Black was born in the Deep South, in Alabama, in 1886, his mother had been a postmistress and his father ran the village general store.

He was called Hugo after the great French radical writer Victor Hugo, whose book his mother was reading when he was born.

His schooling was hard won, as was his pocket-money, which he earned by picking cotton and setting odd paragraphs of type for the local paper.

His legal career started in the police courts of Birmingham, Ala., where he got to know the life of the Negroes and local miners.

As a Southern lawyer seeking advancement in politics, he joined the Ku Klux Klan in 1923, but resigned in 1925 when he began his campaign to win election to the Senate.

When Roosevelt nominated Black in 1937 as a member of the Supreme Court to defend his New Deal legislation, New Deal opponents exploited Black's former membership of the Klan in the press.

A lesser man would have been destroyed, but Black calmly rode the storm and remained to write court opinions, which show him as the champion of every human right denied by the Klan.

Roosevelt's appointments to the Supreme Court created a majority to support progressive labor and social legislation. In this, and in a number of dissenting opinions which expressed even more advanced views, Justice Black consistently placed the individual rights and social good before legal precedent and the interests of corporations.

He was particularly hated by the big business men because of the investigation he conducted into their lobbying activities.

In the postwar years, when Communism and work for peace has been treated as treason, Truman in his turn created a Supreme Court majority that permitted the government to whittle the civil rights of those charged with subversion.

But Justice Black stood fast. He called or America to be a beacon of liberty and a champion of peace.

Alien as Communist principles are to him, he would not weaken the Bill of Rights to strike down the Communists merely for thoughts and beliefs.

He knew, as justice of the Supreme Court, he was in a position to warn the country against actions and ideas which would suffocate democracy. He therefore pleaded passionately for the defendants and in so doing for America's heritage.

12 1957

TEXAS

Beaumont Man Gets $19,750 In Civil Suit

Farmer, Pa
Sat. 6-22-57
Houston Texas

BEAUMONT- Joseph Arceneaux, a 73-year-old inmate of a welfare home here, has won a jury verdict awarding him $19,750 in U S Court.

Mr Arceneaux was plaintiff in the suit against Standard Accident Insurance Company. He was allegedly injured when a horse he was riding was stricken by a truck on Highway 90, one mile west of Nome, Texas.